

रजिस्टर्ड नं० पी० एम०/एस० 14.



# राजपत्र, हिमाचल प्रदेश

## (असाधारण)

हिमाचल प्रदेश राज्यशासन द्वारा प्रकाशित।

शिमला, शनिवार, 24 मार्च, 1979/3 चंत्र, 1901

हिमाचल प्रदेश सरकार

विधान सभा सचिवालय

अधिसूचनाएं

शिमला-171004, 21 मार्च, 1979

संख्या 1-21/79-वि०प०.—हिमाचल प्रदेश विधान सभा प्रक्रिया एवं कार्य संचालन नियमावली, 1973, के नियम 135 के अन्तर्गत, दा हिमाचल प्रदेश स्लम एरियाज (इम्प्रूवमेंट एण्ड कलीयरेस) बिल, 1979 (बिल नम्बर 10 आफ 1979)

जो हिमाचल प्रदेश विधान सभा में 21 मार्च, 1979 को पुरस्थापित किया गया है, सर्वसाधारण की सूचनार्थ राजपत्र में मुद्रित करने के लिए प्रैषित किया जाता है।

वेद प्रकाश भट्टनागर,  
सचिव ।

**THE HIMACHAL PRADESH SLUM AREAS (IMPROVEMENT AND CLEARANCE) BILL, 1979**

(As INTRODUCED IN THE LEGISLATIVE ASSEMBLY)

A  
**BILL**

*to provide for the improvement and clearance of the slum areas and for the protection of tenants in such areas from eviction.*

Be it enacted by the Legislative Assembly of Himachal Pradesh in the Thirtieth Year of the Republic of India as follows:—

**CHAPTER I**  
**PRELIMINARY**

1. (1) This Act may be called the Himachal Pradesh Slum Areas (Improvement and Clearance) Act, 1979.

Short title,  
extent and  
commencement.

(2) It extends to the whole of the State of Himachal Pradesh.

(3) It shall come into force at once.

Definitions

2. In this Act, unless the context otherwise requires,—

(a) "buildings" includes any structure or any part of a building as so defined but does not include plant or machinery comprised in a building;

(b) "clearance area" means the area notified under section 10 of the Act;

(c) "competent authority" means such officer or authority as the State Government may, by notification in the Official Gazette, appoint as the competent authority for the purposes of this Act;

(d) "erection" in relation to a building includes extension, alteration or re-erection;

(e) "occupier" includes an owner in occupation of or otherwise using his own land or building;

(f) "owner" includes any person who is receiving or is entitled to receive the rent of any building or land whether on his own account or on behalf of himself and others or as agent or trustee, or who would so receive the rent or be entitled to receive it if the building or land were let to tenant;

(g) "prescribed" means prescribed by rules made under this Act;

(h) "slum area" means any area declared as such under section 3 of this Act;

(i) "slum clearance" means the clearance of any slum area by the demolition and removal of buildings therefrom;

(j) "State Government" means the Government of the State of Himachal Pradesh;

(k) "work of improvement" includes in relation to any buildings in a slum area the execution of any one or more of the following works, namely:—

(i) necessary repairs;

(ii) structural alterations;

(iii) provision of light points and water taps;

- (iv) construction of drains, open or covered;
- (v) provision of latrines;
- (vi) provision of additional or improved fixture or fittings;
- (vii) opening up or paving of courtyard;
- (viii) removal of rubbish; and
- (ix) any other work including the demolition of any building or any part thereof which in the opinion of the competent authority is necessary for executing any of the works specified above.

## CHAPTER II

### SLUM AREAS

Declaration of slum areas.

3. (1) Where the competent authority upon report from any of its officers or other information in its possession is satisfied in respects any area that the buildings in that area—

- (a) are in any respect unfit for human habitation; or
- (b) are by reason of dilapidation, overcrowding, faulty arrangements and design of such buildings, narrowness or faulty arrangement of streets, lack of ventilation, light or sanitation facilities or any combination of these factors, detrimental to safety, health or morals,

it may, by notification in the Official Gazette, declare such area to be a slum area:

Provided that the competent authority shall not make such declaration unless the persons likely to be affected thereby have been given a reasonable opportunity of showing cause against the proposed declaration.

(2) In determining whether a building is unfit for human habitation for the purposes of this Act, regard shall be had to its condition in respect of the following matters, that is to say—

- (a) repairs;
- (b) stability;
- (c) freedom from dampness;
- (d) natural light and air;
- (e) water supply;
- (f) drainage and sanitary conveniences;
- (g) facilities for storage, preparation and cooking of food and for the disposal of waste water;

and the building shall be deemed to be unfit as aforesaid if and only if it is so far defective on one or more of the said matters that it is not reasonably suitable for occupation in that condition.

## CHAPTER III

### SLUM IMPROVEMENT

Slum improvement.

4. (1) Where the competent authority has made a declaration under section 3 in respect of any area such authority may, unless in its opinion any building in that area is not capable at a reasonable expense of being rendered fit serve upon the owner of the building a notice requiring him within such time not being less than thirty days as may be specified in the notice to execute the works of improvement specified therein and stating that in the opinion of the authority those works will render the building fit for human habitation.

(2) In addition to serving a notice under this section on the owner, the competent authority may serve a copy of the notice on any other person having an interest in the building whether as lessee, mortgagee or otherwise.

(3) In determining for the purposes of this Act, whether a building can be rendered fit for human habitation at a reasonable expense, regard shall be had to the estimated cost of the works necessary to render it so fit and the value which it is estimated that the building will have when the works are completed.

5. (1) If a notice under section 4 requiring the owner of the building to execute works of improvement is not complied with, then after the expiration of the time specified in the notice the competent authority may itself do the works required to be done by the notice.

(2) All expenses incurred by the competent authority under this section, together with interest, at such rate as the State Government may by order fix, from the date when a demand for the expenses is made till payment, may be recovered by the competent authority from the owner of the building as arrears of land revenue:

Provided that if the owner proves that he—

- (a) is receiving the rent merely as agent or trustee for some other person; and
- (b) has not in his hands on behalf of that other person sufficient money to satisfy the whole demand of the authority, his liability shall be limited to total amount of the money which he has in his hand as aforesaid.

(3) If the owner of the building is different from the person who owns the land on which the building stands and the expenses incurred by the competent authority under this section are recoverable from both these persons then, such expenses shall be recovered from them in such proportion as may be determined by the competent authority or by an officer empowered by it in this behalf.

6. Where works of improvement have been executed in relation to any building in a slum area in pursuance of the provisions of sections 4 and 5, the expenses incurred by the competent authority in connection with the maintenance of such works of improvement or the enjoyment of amenities and conveniences rendered possible by such works shall be recoverable from the occupiers of the building as arrears of land revenue.

7. (1) The competent authority may, by notification in the Official Gazette, direct that no person shall erect any building in a slum area except with the previous permission in writing of the competent authority.

(2) Every notification issued under sub-section (1) shall cease to have effect on the expiration of two years from the date thereof except as respects things done or omitted to be done before such cesser.

(3) Every person desiring to obtain the permission referred to in sub-section (1) shall make an application in writing to the competent authority in such form and containing such information in respect of the erection of the building to which the application relates as may be prescribed.

(4) On receipt of such application, the competent authority, after making such inquiry as it considers necessary, shall, by order in writing—

- (a) either grant the permission subject to such terms and conditions, if any, as may be specified in order; or
- (b) refuse to grant such permission:

Enforce-  
ment of  
notice  
requiring  
execution  
of works of  
improve-  
ment.

Expenses of  
maintenance  
of works of  
improvement,  
etc., to be  
recoverable  
from the  
occupiers  
of building.

Restriction  
on building  
etc. in slum  
areas.

Provided that before making an order refusing such permission, the applicant shall be given a reasonable opportunity to show cause why the permission should not be refused.

(5) Nothing contained in sub-section (1) shall apply to—

(a) any works of improvement required to be executed by a notice under sub-section (1) of section 4 or in pursuance of an undertaking given under sub-section (2) of section 8; or

(b) the erection of any building in any area in respect of which a slum clearance order has been made under section 11.

Power of  
competent  
authority  
to order  
demolition  
of building  
unfit for  
human  
habitation.

8. (1) Where a competent authority upon a report from any of its officers or other information in its possession is satisfied that any building within a slum area is unfit for human habitation and is not capable at a reasonable expense of being rendered fit, it shall serve upon the owner of the building, and upon any other person having an interest in the building, whether as lessee, mortgagee or otherwise, a notice to show cause within such time as may be specified in the notice as to why an order of demolition of the building should not be made.

(2) If any of the persons upon whom a notice has been served under sub-section(1), appears in pursuance thereof before the competent authority and gives an undertaking to the authority that such person shall within a period specified by the authority execute such works of improvement in relation to the building to the satisfaction of the authority so as to render the building fit for human habitation the authority shall not make any order of demolition of the building.

(3) If no such undertaking as is mentioned in sub-section (2) is given or if in a case where any such undertaking has been given any work of improvement to which the undertaking relates is not carried out within the specified period, or the building is at any time used in contravention of the terms of the undertaking, the competent authority shall forthwith make an order of demolition of the building requiring that the building shall be vacated within a period to be specified in the order not being less than thirty days from the date of the order, and that it shall be demolished within six weeks after the expiration of that period:

Provided that the competent authority shall not demolish any building until an alternative accommodation for the occupier or occupiers is arranged.

Procedure  
to be follo-  
wed where  
demolition  
order has  
been made.

9. (1) Where an order for demolition of a building under section 8 has been made the owner of the building or any other person having an interest therein shall demolish that building within the time specified in that behalf by the order, and if the building is not demolished within that time the competent authority shall enter and demolish the building and sell the materials thereof.

(2) Any expenses incurred by the competent authority under sub-section (1), if not satisfied out of the proceeds of sale of materials of the building shall be recoverable from the owner of the building or any other person having an interest therein as arrears of land revenue.

## CHAPTER IV

## SLUM CLEARANCE AND RE-DEVELOPMENT

10. (1) Where the competent authority upon a report from any of its officers or other information in its possession is satisfied as respects any slum area that the most satisfactory method of dealing with the conditions in the area is the demolition of all the buildings in the areas, the authority shall, by an order notified in the Official Gazette, declare the area to be a clearance area, that is to say, an area to be cleared of all buildings in accordance with the provisions of this Act:

Power to declare any slum area to be a clearance area.

Provided that the competent authority shall not make any such declaration unless the persons likely to be affected thereby have been given reasonable opportunity of showing cause against the proposed declaration:

Provided further that any building in the area which is not unfit for human habitation and is not dangerous or injurious to health may be excluded from the declaration if the authority considers it necessary.

(2) The competent authority shall forthwith transmit to the State Government a copy of the declaration under this section together with a statement of the number of persons who on a date specified in the statement were occupying buildings comprised in the clearance area.

11. (1) As soon as may be after the competent authority has declared any area to be a clearance area, it shall make a slum clearance order in relation to that area ordering the demolition of each of the buildings specified therein and requiring each such building to be vacated within such time as may be specified in the order and submit the order to the State Government for confirmation:

Slum clearance order.

Provided that the competent authority shall not make such orders unless the persons likely to be affected thereby have been given reasonable opportunity of showing cause against the proposed action.

(2) The State Government may either confirm the order in toto or subject to such variations as it considers necessary or reject the order.

(3) If the State Government confirms the order, the order shall become operative from the date of such confirmation.

(4) When a slum clearance order has become operative the owners of buildings to which the order applies shall demolish the buildings before the expiration of six weeks from the date on which the buildings are required by the order to be vacated or before the expiration of such longer period as in the circumstances of the case the competent authority may deem reasonable.

(5) If the buildings are not demolished before the expiration of the period mentioned in sub-section (4), the competent authority shall enter and demolish the buildings and sell the materials thereof.

(6) Any expenses incurred by the competent authority in demolishing any building shall, if not satisfied out of the proceeds of sale of materials thereof, be recoverable by the competent authority as arrears of land revenue.

(7) Where a slum clearance order has become operative, no land in the area to which the order applies shall be re-developed except in accordance

with plans approved by the competent authority and subject to such restrictions and conditions, if any, as the competent authority may think fit to impose:

Provided that an owner who is aggrieved by a restriction or condition so imposed on the user of his land by a subsequent refusal of the competent authority to cancel or modify any such restriction or condition may, within such time and in such manner as may be prescribed, appeal to the State Government and the State Government shall make such order in the matter as it thinks proper and its decision shall be final.

(8) No person shall commence or cause to be commenced any work in contravention of a plan approved or a restriction or condition imposed under sub-section (7).

Power of  
competent  
authority  
to redeve-  
lop clearance  
area.

12. (1) Notwithstanding anything contained in sub-section (7) of section 11, the competent authority may at any time after the land has been cleared of the buildings in accordance with a slum clearance order but before the work of re-development of that land has been commenced by the owner, by order, determine to re-develop the land if that authority is satisfied that it is necessary in the public interest to do so.

(2) Where land has been cleared of the buildings in accordance with a slum clearance order, the competent authority, if it is satisfied that the land has been, or is being, re-developed by the owner thereof in a contravention of plans approved by the authority or any restrictions or conditions imposed under sub-section (7) of section 11 or has not been re-developed within the time, if any, specified under such conditions, may, by order, determine to re-develop the land:

Provided that before passing such order, the owner shall be given a reasonable opportunity to show cause why the order should not be passed.

## CHAPTER V

### ACQUISITION OF LAND

Power of  
State Go-  
vernment  
to acquire  
land.

13. (1) Where on report from the competent authority it appears to the State Government that, in order to enable the authority to execute any work of improvement in relation to any building in a slum area or to re-develop any clearance area, it is necessary that the land within, adjoining or surrounded by any such area should be acquired, the State Government may acquire the land by publishing in the Official Gazette a notice to the effect that the State Government has decided to acquire the land in pursuance of this section:

Provided that, before publishing such notice, the State Government may call upon the owner of, or any other person, who, in the opinion of the State Government, may be interested in, such land to show cause why it should not be acquired, and after considering the cause, if any, shown by the owner or any other person interested in the land, the State Government may pass such order as it deems fit.

(2) When a notice as aforesaid is published in the Official Gazette, the

land shall on and from the date on which the notice is so published, vest, absolutely in the State Government free from all encumbrances.

**14.** Where any land in a slum area or clearance area has been acquired under this Act the State Government shall make the land available to the competent authority for the purpose of executing any work of improvement or carrying out any order of demolition or for the purpose of the re-development.

Land acquired by State Govt. to be made available to the competent authority.

**15.** Every person having any interest in any land acquired under this Act shall be entitled to receive from the State Government the amount as provided hereinafter in this Act.

Right to receive amount.

**16.** (1) The amount payable in respect of any land acquired under this Act shall be an amount equal to sixty times the net average monthly income actually derived from such land during the period of five consecutive years immediately preceding the date of publication of the notice referred to in section 13.

Basis for determination of amount.

(2) The net average monthly income referred to in sub-section (1) shall be calculated in the manner and in accordance with the principles set out in the Schedule appended to this Act.

(3) The competent authority shall, after holding any inquiry in the prescribed manner, determine in accordance with the provision of sub-section (2) the net average monthly income actually derived from the land and publish a notice in the Official Gazette specifying the amount so determined and calling upon the owner of the land and every person interested therein to intimate it before a date specified in the notice whether such owner or person agrees to the amount so determined and if he does not so agree, what amount he claims to be the net average monthly income actually derived from the land.

(4) Any person who does not agree to the amount of the net average monthly income determined by the competent authority under sub-section (3) and claims a sum in excess of that amount may prefer an appeal to the State Government within thirty days from the date specified in the notice referred to in that sub-section.

(5) On appeal the State Government shall, after hearing the appellant, determine the net average monthly income and its determination shall be final and shall not be questioned in any court of law.

(6) Where there is any building on the land in respect of which the net average monthly income has been determined, no separate amount shall be paid in respect of such building:

Provided that where the owner of the land and the owner of the building on such land are different, the competent authority shall apportion the amount between the owner of the land and the owner of the building in the same proportion as the market price of the land bears to the market price of the building on the date of acquisition:

Provided further that the amount in respect of the building shall not in any case exceed fifty per cent of the total amount which has been determined in accordance with the provision of this section.

Apportionment of amount.

17. (1) Where several persons claim to be interested in the amount determined under section 16, the competent authority shall determine the persons who in its opinion are entitled to receive amount and the amount payable to each of them.

(2) If any dispute arises as to the apportionment of amount or any part thereof, or as to the persons to whom the same or any part thereof is payable, the competent authority may refer the dispute to the decision of the State Government and the State Government in deciding any such dispute shall follow, as far as may be, the provisions of Part-III of the Land Acquisition Act, 1894.

Payment of the amount or the deposit of the same in the court.

18. (1) After the amount has been determined the competent authority shall on behalf of the State Government tender payment of and pay the amount to the persons entitled thereto.

(2) If the persons entitled to the amount do not consent to receive it, or if there be any dispute as to the title to receive amount or as to the apportionment of it, the competent authority shall deposit the amount in the court of the District Judge and that court shall deal with the amount so deposited in the manner laid down in sections 32 and 33 of the Land Acquisition Act, 1894.

Powers of competent authority in relation to determination of amount etc.

19. (1) The competent authority may for the purposes of determining the amount or apportionment thereof, require, by order, any person to furnish such information in his possession as may be specified in the order.

(2) The competent authority shall, while holding inquiry under section 16, have all the powers of a civil court while trying a suit under the Code of Civil Procedure, 1908 in respect of the following matters, namely:—

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of any document;
- (c) reception of evidence on affidavits;
- (d) requisitioning any public record from any court or office;
- (e) issuing commissions for examination of witnesses.

## CHAPTER VI

### PROTECTION OF TENANTS IN SLUM AREAS FROM EVICTIONS

Proceedings for eviction of tenants not to be taken without permission of the competent authority.

20. (1) Notwithstanding anything contained in any other law for the time being in force, no person shall, except with the previous permission in writing of the competent authority,—

- (a) institute, after the commencement of the Act, any suit or proceeding for obtaining any decree or order for the eviction of a tenant from any building or land in a slum area; or
- (b) where any decree or order is obtained in any suit or proceeding instituted before such commencement for the eviction of a tenant from any building or land in such area, execute such decree or order.

(2) Every person desiring to obtain the permission referred to in sub-section (1) shall make an application in writing to the competent authority in such form and containing such particulars as may be prescribed.

(3) On receipt of such application, the competent authority, after giving an opportunity to the parties of being heard and after making such summary inquiry into the circumstances of the case as it thinks fit, shall by order in writing, either grant or refuse to grant such permission.

(4) In granting or refusing to grant the permission under sub-section (3) the competent authority shall take into account the following factors, <sup>4</sup> namely:—

- (a) whether alternative accommodation within the means of the tenant would be available to him if he were evicted;
- (b) whether the eviction is in the interest of improvement and clearance of the slum areas;
- (c) such other factors, if any, as may be prescribed.

(5) Where the competent authority refuses to grant the permission, it shall record a brief statement of reasons for such refusal and furnish a copy thereof to the applicant.

**21.** Any person aggrieved by an order of the competent authority refusing to grant the permission referred to in sub-section (1) of section 20 may, within such time and manner as may be prescribed, prefer an appeal to the State Government and the decision of the State Government on such appeal shall be final.

Appeal against the order under sub-section (1) of section 20.

**22.** (1) Where a tenant in occupation of any building in a slum area vacates any building or is evicted therefrom on the ground that it was required for the purpose of executing any work of improvement or for the purpose of re-erection of the building, the tenant may, within such time as may be prescribed, file a declaration with the competent authority that he desires to be replaced in occupation of the building after the completion of the work of improvement or re-erection of the building, as the case may be.

Restoration of possession of premises vacated by a tenant.

(2) On receipt of such declaration, the competent authority shall by order require the owner of the building to furnish to it, within such time as may be prescribed, the plans of the work of improvement or re-erection of the buildings and estimates of the cost thereof and such other particulars as may be necessary and shall, on the basis of such plans and estimates and particulars, if any, furnished and having regard to the provisions of sub-section (3) of section 23 and after holding such inquiry as it may think fit, provisionally determine the rent that would be payable by the tenant if he were to be replaced in occupation of the building in pursuance of the declaration made by him under sub-section (1).

(3) The rent provisionally determined under sub-section (2) shall be communicated in the prescribed manner to the tenant and the owner.

(4) If the tenant after the receipt of such communications intimates in writing to the competent authority within such time as may be prescribed that when he is replaced in occupation of the building in pursuance of the declaration made by him under sub-section (1), he would pay to the owner until the rent is finally determined under section 23 the rent provisionally determined under sub-section (2), the competent authority shall direct the owner to place the tenant in occupation of the building after the completion

of the work of improvement or re-erection of the building, as the case may be, and the owner shall be bound to comply with such direction.

Rent of buildings in slum areas.

23. (1) Where any building in a slum area is let to a tenant after the execution of any work of improvement or after it has been re-erected, the rent of the building shall be determined in accordance with the provisions of this section.

(2) Where any such building is let to a tenant other than a tenant who is placed in possession, of the building in pursuance of a direction issued under sub-section (4) of section 22 the tenant shall be liable to pay the owner,—

- (a) if there is a general law relating to the control of rents in force in the area in which the building is situated and applicable to that building, the rent determined in accordance with the provisions of that law;
- (b) if there is no such law in force in such area, such rent as may be agreed upon between the owner and the tenant.

(3) Where any such building is let to a tenant in pursuance of a direction issued under sub-section (4) of section 22, the tenant shall, notwithstanding any law relating to the control of rents in force in the area, be liable to pay to the owner—

- (a) if any work of improvement has been executed in relation to the building an annual rent of a sum equivalent to the aggregate of the following amounts, namely:—
  - (i) the annual rent the tenant was paying immediately before he vacated the building for improvement;
  - (ii) six per cent of the cost of the work of improvement; and
  - (iii) six per cent of a sum equivalent to the amount payable in respect of any land which may have been acquired for the purpose of effecting such improvement as if such land were acquired under section 13 on the date of the commencement of the work of improvement;
- (b) if the building has been re-erected, an annual rent of a sum equivalent to four per cent of the aggregate cost of reconstruction of the building and the cost of the land on which the building is erected.

*Explanation.*—For the purpose of this clause, “the cost of the land” shall be deemed to be a sum equivalent to the amount payable in respect of the land if it were acquired under section 13 on the date of commencement of the reconstruction of the building.

Chapter not to apply to eviction of tenants from certain buildings.

24. Nothing in this chapter shall apply to or in relation to the execution of any decree or order under any law for the eviction of a tenant from any building in a slum area belonging to the State Government or any local authority.

## CHAPTER VII

### MISCELLANEOUS

Power of entry.

25. It shall be lawful for any person authorised by the competent authority in this behalf to enter into or upon any building or land in a slum

area with or without assistance of workmen in order to make any enquiry, inspection, measurement, valuation or survey, or to execute any work which is authorised by or under this Act or which it is necessary to execute for any of the purpose or in pursuance of any of the provisions of this Act or any rule or order made thereunder.

26. (1) The competent authority may, by general or special order, authorise any person—

Power of inspection.

- (a) to inspect any drain, latrine, urinal, cesspool, pipe, sewer, or channel in or on any building or land in a slum area, and in his discretion to cause the ground to be opened for the purpose of preventing or removing any nuisance arising from the drain, latrine, urinal, cesspool, pipe, sewer or channel, as the case may be;
- (b) to examine works under construction in slum area, to take levels or to remove, test, examine or replace any meter.

(2) If, on such inspection, the opening of the ground is found to be necessary for the prevention or removal of a nuisance, the expenses necessary thereby incurred shall be paid by the owner to the occupier of the land or building but if it is found that no nuisance exists or but for such opening would have arisen, the ground or portion of any building, drain, or other work opened, injured or removed for the purpose of such inspection shall be filled in, reinstated or made good, as the case may be, by the competent authority.

27. (1) Any person authorised by the competent authority in this behalf may, with or without assistants or workmen, enter on any land within fifty yards of any work authorised by or under this Act for the purpose of depositing thereon any soil, gravel, stone or other materials or for obtaining access to such work or for any other purposes connected with the carrying on of the same.

Power to enter land adjoining and where work is in progress.

(2) The person so authorised shall, before entering on any land under sub-section (1), state the purpose thereof, and shall, if so required by the occupier, or owner, fence off so much of the land as may be required for such purpose.

(3) The person so authorised shall, in exercising any power conferred by this section, do as little damage, as may be, and amount shall be payable by the competent authority to the owner or the occupier of such land or to both for any such damage whether permanent or temporary.

28. It shall be lawful for any person authorised by the competent authority in this behalf to make any entry into any place, to open or cause to be opened any door, gate or other barrier—

Breaking into buildings.

- (a) if he considers the opening thereof necessary for the purpose of such entry; and
- (b) if the owner or occupier is absent, or being present refuses to open such door, gate or barrier.

29. No entry authorised under this Act, shall be made except between the hours of sunrise and sunset.

Entry to be made in the day time.

30. Save as otherwise provided in this Act, no building or land shall be entered without the consent of the occupier, or if there is no occupier, of the owner thereof and no such entry shall be made without

Owner's consent ordinarily to be obtained.

giving the said occupier or owner, as the case may be, not less than twenty-four hours' written notice of the intention to make such entry:

Provided that no such notice shall be necessary if the place to be inspected is a shed for cattle or latrine, urinal or a work under construction.

Power of eviction to be exercised only by the competent authority.

31. Where the competent authority is satisfied either upon a representation from the owner of a building or upon other information in its possession that the occupants of the building have not vacated it in pursuance of any notice, order or direction issued or given by the authority, the authority shall, by order, direct the eviction of the occupants from the building in such manner and within such time as may be specified in the order:

Provided that before making any order under this section the competent authority shall give a reasonable opportunity to the occupants of the building to show cause why they could not be evicted therefrom:

Provided further that if the occupants are unable to find any alternative accommodation, the competent authority shall arrange for the alternative accommodation for the occupants before the eviction.

Power to remove offensive or dangerous trades from slum areas.

32. The competent authority may, by order in writing, direct any person carrying on any dangerous or offensive trade in a slum area to remove the trade from that area within such time as may be specified in the order :

Provided that no order under this section shall be made unless the person carrying on the trade has been afforded a reasonable opportunity of showing cause as to why the order should not be made.

Appeals.

33. (1) Except as otherwise expressly provided in this Act, any person aggrieved by any notice, order or direction issued or given by the competent authority may appeal to the State Government within a period of thirty days from the date of issue of such notice, order or direction.

(2) Every appeal under this Act shall be made by petition in writing accompanied by a copy of the notice, order or direction appealed against.

(3) On the admission of an appeal, all proceedings to enforce the notice, order or direction and all prosecutions for any contravention thereof shall be held in abeyance pending the decision of the appeal, and if the notice, order or direction is set aside on appeal, disobedience thereto shall not be deemed to be an offence.

(4) No appeal shall be decided under this section unless the appellant has been heard or has had a reasonable opportunity of being heard in person or through a legal practitioner.

(5) The decision of the State Government on appeal shall be final and shall not be questioned in any court.

Service of notices etc.

34. (1) Every notice/order or direction issued under this Act shall, save as otherwise expressly provided in this Act, be served,—

(a) by giving or tendering the notice, order or direction, or by sending it by post to the person for whom it is intended ; or

(b) if such person cannot be found, by affixing the notice, order or direction on some conspicuous part of his last known place of abode or business, or by giving or tendering the notice, order or direction to some adult male member or servant of his family or by causing it to be affixed on some conspicuous part of the building or land, if any to which it relates.

(2) Where the person on whom a notice, order or direction is to be served is a minor, service upon his guardian or upon any adult male member of his family shall be deemed to be the service upon the minor.

(3) Every notice, order or direction which by or under this Act is to be served as a public notice, order or direction which is not required to be served to any individual therein specified shall, save as otherwise expressly provided, be deemed to be sufficiently served if a copy thereof is affixed in such conspicuous part of the office of the competent authority or in such other public place during such period, or is published in such local newspaper or in such other manner, as the competent authority may direct.

**35.** (1) Whoever does any act in contravention of any notice, order or direction issued or given under this Act shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both, and when the breach is a continuing breach, with further fine which may extend to twenty-five rupees for every day after the first during which the breach continues.

(2) Whoever commences or causes to be commenced any work in contravention of any restriction or condition imposed under sub-section (7) of section 11 or any plan for the re-development of a clearance area shall be punishable with imprisonment which may extend to three months, or with fine which may extend to one thousand rupees, or with both and when the breach is a continuing breach, with further fine which may extend to twenty-five rupees for every day after the first during which the breach continues.

(3) Whoever obstructs the entry of any person authorised under this Act to enter into or upon any building or land or molests such person after such entry shall be punishable with fine which may extend to one thousand rupees.

(4) If the person committing an offence under this Act is a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(5) Notwithstanding anything contained in sub-section (3) where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

**Explanation.—**For the purpose of this section—

- (a) "company" means a body corporate and includes a firm or other association of individuals; and
- (b) "director" in relation to a firm means a partner in the firm.

Order of demolition of buildings in certain cases.

36. Where the erection of any building has been commenced or is being carried out, or has been completed, in contravention of any restriction or condition imposed under sub-section (7) of section 11 or plan for the re-development of any clearance area or in contravention of any notice, order or direction issued or given under this Act, the competent authority may, in addition to any other remedy that may be resorted to under this Act or under any other law, make an order directing that such erection shall be demolished by the owner thereof within such time not exceeding two months as may be specified in the order and on the failure of the owner to comply with the order, the competent authority may itself cause the erection to be demolished and the expenses of such demolition shall be recoverable from the owner as arrears of land revenue:

Provided that no such order shall be made unless the owner has been given a reasonable opportunity of being heard.

Jurisdiction of courts.

37. No court inferior to that of a Judicial Magistrate of the first class shall try an offence punishable under this Act.

Previous sanction of the competent authority or officer authorised by it for prosecution.

Power to delegate.

Protection of action taken in good faith.

Competent authority etc. to be public servants.

Act to override other laws.

Power to make rules.

38. No prosecution for any offence punishable under this Act shall be instituted except with the previous sanction of the competent authority or an officer authorised by the competent authority in this behalf.

39. The competent authority may, by notification in the Official Gazette, direct that any power exercisable by it under this Act may also be exercised, in such cases and subject to such conditions, if any, as may be specified in the notification, by such officer or the local authority as may be mentioned therein.

40. No suit, prosecution or other legal proceedings shall lie against the competent authority or against any person for anything which is in good faith done or intended to be done under this Act or the rules made thereunder.

41. The competent authority and any person authorised by him under this Act shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

42. The provisions of this Act and the rules made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law.

43. (1) The State Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing

power such rules may provide for all or any of the following matters, namely:—

- (a) the manner of authentication of notices, orders and other instruments of the competent authority;
- (b) the preparation of plans for the re-development of any slum area, and matters to be included in such plans;
- (c) the form in which an application under sub-section (3) of section 7 shall be made and the information to be furnished and the fees to be levied in respect of such application;
- (d) the manner in which inquiries may be held under sections 16 and 20;
- (e) the form and manner in which applications for permission under sub-section (2) of section 20 shall be made and the fees to be levied in respect of such applications;
- (f) the procedure to be followed by the competent authority before granting or refusing to grant permission under section 20;
- (g) the time and manner within which an appeal may be preferred under sub-section (7) of section 11 or section 21;
- (h) the time within which a declaration may be filed under sub-section (1) or an intimation may be sent under sub-section (4) of section 22 and the fees, if any, to be levied in respect of such declaration;
- (i) the time within which plans, estimates and other particulars referred to in sub-section (2) of section 22 may be furnished;
- (j) the procedure to be followed by the competent authority for fixing the provisional rent under sub-section (2) of section 22;
- (k) the manner in which the rent provisionally determined under section 22 shall be communicated to the tenants and owners;
- (l) the matter in respect of which provision may be made under sub-section (5) of section 23;
- (m) the officers and local authorities to whom powers may be delegated under section 39; and
- (n) any other matter which has to be, or may be, prescribed.

(3) Every rule made under this section shall be laid as soon as may be after it is made, before the Legislative Assembly while it is in session for a total period of not less than fourteen days, which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session in which it is so laid or the sessions aforesaid, the Assembly makes any modification in the rule or decides that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

96 of 1956.

24 of 1961.

31 of 1966.

**44.** (1) The Slum Areas (Improvement and Clearance) Act, 1956 as amended from time to time, as in force in the areas comprised in Himachal Pradesh immediately before 1st November, 1966, and the Punjab Slum Areas (Improvement and Clearance) Act, 1961, as in force in the areas added to Himachal Pradesh under section 5 of the Punjab Re-organisation Act, 1966 are hereby repealed.

Repeal and savings.

(2) Notwithstanding such repeal, anything done, or any action taken, rules, regulations, bye-laws and orders made, notification and notices issued, and suits instituted under any Act repealed under sub-section (1) shall, so far as may be, be deemed to have been respectively done, made, issued, and instituted under the corresponding provisions of this Act.

**SCHEDULE**

*(See section 16)*

**PRINCIPLES FOR DETERMINATION OF THE NET AVERAGE  
MONTHLY INCOME**

1. The competent authority shall first determine the gross rent actually derived by the owner of the land acquired including any building on such land during the period of five consecutive years referred to in sub-section (1) of section 16.
2. For such determination the competent authority may hold any local inquiry and obtain, if necessary, certified copies of extracts from the property tax assessment books of the municipal or other local authority concerned showing the rental value of such land.
3. The net average monthly income referred to in sub-section (1) of section 16 shall be sixty per cent of the average monthly gross rent which shall be one-sixth of the gross rent during the five consecutive years as determined by the competent authority under paragraph 1.
4. Forty per centum of the gross monthly rental referred to above shall not be taken into consideration in determining the net average monthly income but shall be deducted in lieu of the expenditure which the owner of the land would normally incur for payment of any property tax to the municipal or other local authority for collection charges, income-tax or bad debts, as well as for works of repair and maintenance of the buildings, if any on the land.
5. Where the land or any portion thereof has been un-occupied or the owner has not been in receipt of any rent for the occupation of the land during the whole or any part of the said period of five years, the gross rent shall be taken to be the income which the owner would in fact have derived if the land had been leased out for rent during the said period, and for this purpose the rent actually derived from the land during a period prior or subsequent to the period during which it remained vacant or from similar land in the vicinity shall be taken into account.

## STATEMENT OF OBJECTS AND REASONS

The Punjab Slum Areas (Improvement and Clearance) Act, 1961, is in force in the areas added to Himachal Pradesh under section 5 of the Punjab Re-organisation Act, 1966, and in the areas which comprised in Himachal Pradesh immediately before 1-10-1966, the Slum Areas (Improvement and Clearance) Act, 1956, is in force. With a view to bringing about uniformity in laws in force in two different parts of Himachal Pradesh it is necessary to have unified law on the subject for the whole of the State of Himachal Pradesh.

This Bill seeks to achieve the aforesaid object.

DAULAT RAM CHAUHAN,  
*Minister-in-charge.*

SIMLA:

The 4th March, 1979.

## FINANCIAL MEMORANDUM

Clause 14 of the Bill, makes provision for the acquisition of land and payment of amount in lieu thereof by the State Government. The slum clearance work is being done by various Departments of Government, *i.e.* Housing, C.C.D. Health, P.W.D. and L.S.G. etc. All these Departments have been given grants during 5th Five-Year Plan by the State Government. Every scheme of slum clearance covers the amount, if any, in respect of land/area to be acquired. The provisions of the proposed Bill shall be implemented through the existing sanctioned staff of the respective Departments. The exact amount involved for the implementation of the provisions contained in the Bill cannot be correctly estimated.

## MEMORANDUM ON DELEGATED LEGISLATION

Clause 39 of the Bill empowers the competent authority to delegate the powers exercisable by it under the proposed Bill to any other officer or the local authority, as it may consider fit. Sub-clause (1) of clause 43 of the Bill provides for framing the rules consistent with the provisions in the Bill and to carry out the purposes of the said Act. The rules when framed, shall be laid before the Legislative Assembly. This delegation, is normal in character.

## RECOMMENDATIONS OF THE GOVERNOR UNDER ARTICLE 207 OF THE CONSTITUTION OF INDIA

(Noting on the Local Self Government Department File No. 1-16/70-  
L.S.G.)

The Governor of Himachal Pradesh having been informed of the subject matter of the Himachal Pradesh Slum Areas (Improvement and Clearance) Bill, 1979, recommends under Article 207 of the Constitution of India, the introduction and consideration of the Bill in the Legislative Assembly.

शिमला-171004, 21 मार्च, 1979

संख्या 1-28/79-वि० स०.—हिमाचल प्रदेश विधान सभा प्रक्रिया एवं कार्य संचालन नियमावली, 1973, के नियम 135 के अन्तर्गत, दा हिमाचल प्रदेश युनिवर्सिटी (अपैन्डमैण्ट) बिल, 1979 (बिल नम्बर 3 आफ 1979) जो हिमाचल प्रदेश विधान सभा में 20 मार्च, 1979 को पुरस्थापित किया गया है, सर्वसाधारण की सूचनार्थ राजपत्र में मुद्रित करने के लिए प्रेषित किया जाता है ।

वेद प्रकाश भटनागर,  
सचिव ।

Bill No. 3 of 1979.

THE HIMACHAL PRADESH UNIVERSITY (AMENDMENT)  
BILL, 1979

(AS INTRODUCED IN THE LEGISLATIVE ASSEMBLY)

A

BILL

*further to amend the Himachal Pradesh University Act, 1970 (Act No. 17 of 1970).*

Be it enacted by the Legislative Assembly of Himachal Pradesh in the Thirtieth Year of the Republic of India as follows:—

1. (1) This Act may be called the Himachal Pradesh University (Amendment) Act, 1979.

Short title and commencement.

(2) It shall come into force at once.

2. For the existing section 29 of the Himachal Pradesh University Act, 1970, the following section 29 shall be substituted, namely:—

Substitution of section 29.

“(29) (1) The accounts of the University shall at least once in every year and at intervals of not more than fifteen months be audited by an agency specifically authorised in this behalf by the State Government from time to time in the public interest.

(2) The accounts, when audited, shall be printed and copies thereof together with audit report shall be submitted by the Finance Officer to the Executive Council which shall forward them to the State Government with such comments as may be deemed necessary and the State Government shall cause a copy of the audited accounts together with its comments to be laid before the State Legislature.”

17 of 1970

## STATEMENT OF OBJECTS AND REASONS

Sub-section (1) of section 29 of the Himachal Pradesh University Act, 1970 provides that the accounts of the University shall once at least every year and at intervals of not more than fifteen months be audited by the Comptroller and Auditor General of India or any person authorised by him in this behalf. At the same time Article 149 of the Constitution of India provides that Comptroller and Auditor General shall perform such duties and exercise such powers in relation to the accounts of the Union and of the States as may be prescribed by law made by Parliament. Under these constitutional powers the Parliament has passed the Comptroller and Auditor General's (Duties, Powers and Conditions of Service) Act, 1971. Accordingly it has been noted that section 29 (1) of the Himachal Pradesh University Act, 1970 is violative of Article 149 of the Constitution and section 19 (3) of the Comptroller and Auditor General's (Duties, Powers and Conditions of Service) Act, 1971. It is, therefore, necessary to remove the said anomaly. Further sub-section (2) of section 29 is proposed to be amended so as to provide laying of the audited statements of accounts of the Himachal Pradesh University before the State Legislature.

The Bill seeks to achieve the aforesaid objects.

SIMLA:  
The 20th March, 1979.

SHANTA KUMAR,  
*Chief Minister.*

## FINANCIAL MEMORANDUM

The Bill is aimed at removing legal lacuna. The proposal does not involve any additional financial liability. The audit and accounts of the Himachal Pradesh University will be audited by the Accountant General, Himachal Pradesh and Chandigarh, as before.

## MEMORANDUM REGARDING DELEGATED LEGISLATION

Nil

शिमला-171004, 21 मार्च, 1979

संख्या 1-19/79-वि० स०.—हिमाचल प्रदेश विधान सभा प्रक्रिया एवं कार्य संचालन नियमावली, 1973, के नियम 135 के अन्तर्गत, दा हिमाचल प्रदेश टैक्सेशन (आन सरटेन गुड्ज कैरिड बाई रोड) (अमैण्डमैन्ट) बिल, 1979 (बिल नम्बर 4 आफ 1979) जो हिमाचल प्रदेश विधान सभा में 20 मार्च, 1979 को पुरस्थापित किया गया है, सर्वसाधारण की सूचनार्थ राजपत्र में मुद्रित करने के लिए प्रेषित किया जाता है ।

वेद प्रकाश भटनागर,  
सचिव ।

Bill No. 4 of 1979.

THE HIMACHAL PRADESH TAXATION (ON CERTAIN GOODS  
CARRIED BY ROAD) (AMENDMENT) BILL, 1979

(AS INTRODUCED IN THE LEGISLATIVE ASSEMBLY)

A

BILL

*further to amend the Himachal Pradesh Taxation (On Certain Goods Carried by Road) Act, 1976 (Act No. 34 of 1976).*

BE it enacted by the Legislative Assembly of Himachal Pradesh in the Thirtieth Year of the Republic of India, as follows:—

1. (1) This Act may be called the Himachal Pradesh Taxation (On Certain Goods Carried by Road) (Amendment) Act, 1979.

Short title  
and comm  
encement.

(2) It shall come into force at once.

2. After sub-section (2) of section 3 of the Himachal Pradesh Taxation (On Certain Goods Carried by Road) Act, 1976, the following sub-section

Amendmen  
of section 3

(3) shall be added, namely:—

“(3) Notwithstanding anything contained in sub-section (2), the Government may, in public interest by notification, exempt any of the goods or class of goods specified in the schedule from the payment of tax under the Act subject to such conditions as it may deem fit”.

3. The Himachal Pradesh Taxation (On Certain Goods Carried by Road) (Amendment) Ordinance, 1978, is hereby repealed:

Repeal and  
savings.

Provided that anything done, any rule made or any action taken under the said Ordinance shall be deemed to have been done, made or taken under this Act, as if this Act had come into force with effect from the 9th November, 1978.

## STATEMENT OF OBJECTS AND REASONS

Under the existing provisions of the Himachal Pradesh Taxation (On Certain Goods Carried by Road) Act, 1976 (Act No. 34 of 1976) no power has been conferred upon the State Government, in exercise of which it may exempt, from the payment of tax under the Act, any goods or class of goods specified in the schedule appended to the said Act. Occasions often arise, under which the State Government, in the public interest, may have to accord exemption to certain goods or the class of goods specified in the said schedule, from the payment of tax under the Act. In order to make a provision to that extent and to enable the State Government to exempt, in the public interest, certain goods or class of goods from the payment of tax under the Act, subject to such conditions as it may deem fit to impose, it has become necessary to amend the provisions of section 3 of the Act.

Since the Legislative Assembly was not in session and circumstances to the satisfaction of the Governor existed, which rendered it necessary for him to take immediate action under clause (1) of Article 213 of the Constitution of India, the Governor of Himachal Pradesh promulgated the Himachal Pradesh Taxation (On Certain Goods Carried by Road) (Amendment) Ordinance, 1978, (Ordinance No. 4 of 1978) on the 9th November, 1978.

The Bill aims at replacing the aforesaid Ordinance without any modification.

SIMLA:  
The 20th March, 1979.

JAGDEV CHAND,  
*Minister-in-charge.*

## FINANCIAL MEMORANDUM

Clause 2 of the Bill makes the provision for the exemption of certain goods from the payment of the tax under the principal Act. Since the said exemption has to be accorded only in such circumstances as the public interest may warrant, it cannot be exactly anticipated that to what extent the State exchequer shall be affected thereby.

## MEMORANDUM REGARDING DELEGATED LEGISLATION

Nil

## RECOMMENDATIONS OF THE GOVERNOR UNDER ARTICLE 207 OF THE CONSTITUTION OF INDIA

[Excise & Taxation Department, File No. EXN. F. (18)-1/76-Part.]

The Governor of Himachal Pradesh, having been informed of the subject matter of the Himachal Pradesh Taxation (On Certain Goods Carried by Road) (Amendment) Bill, 1979, recommends, under Article 207 of the Constitution of India, its introduction in, and consideration by, the Legislative Assembly of Himachal Pradesh.

शिप्रला-171004, 21 मार्च, 1979

संख्या 1-15/79-वि 080.—हिमाचल प्रदेश विधान सभा प्रक्रिया एवं कार्य संचालन, नियमावली, 1973, के नियम 135 के अन्तर्गत, दा हिमाचल प्रदेश एग्रिकलचरल प्रोडियुस मार्केट्स (अमैण्डन्मैट) बिल, 1979 (बिल नम्बर 5 आफ 1979) जो हिमाचल प्रदेश विधान सभा में 20 मार्च, 1979 को पुरस्थापित किया गया है, सर्वसाधारण की सूचनार्थ राजपत्र में मुद्रित करने के लिए प्रेषित किया जाता है।

वेद प्रकाश भटनागर,  
सचिव ।

Bill No. 5 of 1979.

THE HIMACHAL PRADESH AGRICULTURAL PRODUCE  
MARKETS (AMENDMENT) BILL, 1979

(As INTRODUCED IN THE LEGISLATIVE ASSEMBLY)

A

## BILL

to amend the Himachal Pradesh Agricultural Produce Markets Act, 1969 (Act No. 9 of 1970).

Be it enacted by the Legislative Assembly of Himachal Pradesh in the Thirtieth Year of the Republic of India as follows:—

**1.** (1) This Act may be called the Himachal Pradesh Agricultural Produce Markets (Amendment) Act, 1979. Short title and commencement.

(2) It shall come into force at once.

**2.** The existing section 35 of the Himachal Pradesh Agricultural Produce Markets Act, 1969 shall be re-numbered as sub-section (1) of section 35 and to the said section so re-numbered the following sub-section (2) shall be added, namely:—

“(2) Notwithstanding anything contained in sub-section (1), the State Government may, wherever it is expedient to do so in the public interest, by notification, add to the schedule to this Act any other item of agricultural produce or amend or omit any item of such produce specified therein, subject to such conditions as it may deem fit to impose, in its application to a market committee or committees and thereupon the schedule in its application to that/those market committee/committees shall be deemed to have been amended accordingly.”

## STATEMENT OF OBJECTS AND REASONS

Since most of the agricultural produce is imported from outside the State in the agricultural markets set-up under the Himachal Pradesh Agricultural Produce Markets Act, 1969 (Act No. 9 of 1970), the parties to the transactions have to pay the central sales tax, in addition to the market fees levied under section 21 of the Himachal Pradesh Agricultural Produce Markets Act, 1969. In order to reduce the prices of such agricultural produce being imported from outside the State and also to afford the relief to the parties to the transactions relating to such agricultural produce in the agricultural markets in the Pradesh, it is desirable that the necessary provisions should be made in the Act itself. Section 35 of the Act no doubt empowers the State Government to add to, amend or omit from the Schedule to the Act, any item of agricultural produce, but any amendment made in pursuance of the said statutory power has to be made applicable throughout the State. The nature of agricultural produce imported from outside varies from market to market. In view of this, conferment of the authority on the State Government to exempt the agricultural produce from the levy of fee chargeable under the Act, in any particular market committee or committees, is necessary and as such section 35 (*ibid*) is required to be amended.

This Bill seeks to achieve the aforesaid objective.

SIMLA:

The 20th March, 1979.

BACHITTER SINGH,

Minister-in-charge.

## FINANCIAL MEMORANDUM

Nil

## MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 2 of the Bill seeks to amend section 35 of the principal Act, to empower the State Government, wherever it is expedient to do so in the public interest to amend the Schedule to the Act, subject to such conditions as it may deem fit to impose, in its application to a market committee or committees. This delegation is normal and essential in character.

शिमला-171004, 21 मार्च, 1979

संख्या 1-23/79-वि० स०.—हिमाचल प्रदेश विधान सभा प्रक्रिया एवं कार्य संचालन नियमावली, 1973 के नियम 135 के अन्तर्गत, दा हिमाचल प्रदेश जनरल सेल्ज टैक्स (वैलिडेशन) बिल, 1979 (बिल नम्बर 7 आफ 1979) जो हिमाचल प्रदेश विधान सभा में 20 मार्च, 1979 को पुरस्थापित किया गया है, सर्वसाधारण की सूचनार्थ राजपत्र में मुद्रित करने के लिए प्रेषित किया जाता है।

वेद प्रकाश भट्टाचार्य,  
सचिव।

Bill No. 7 of 1979.

THE HIMACHAL PRADESH GENERAL SALES TAX  
(VALIDATION) BILL, 1979

(AS INTRODUCED IN THE LEGISLATIVE ASSEMBLY)

A

BILL

to validate the levy and collection of tax on sale of liquor (Foreign liquor and Indian made foreign liquor including wines and beer) under the Himachal Pradesh General Sales Tax Act, 1968 (Act No. 24 of 1968) during the period from the 1st day of April, 1978 to the 4th day of December, 1978.

Be it enacted by the Legislative Assembly of Himachal Pradesh in the Thirtieth Year of the Republic of India, as follows:—

1. This Act may be called the Himachal Pradesh General Sales Tax (Validation) Act, 1979. Short title

2. Notwithstanding any judgement, decree or order of any court or other authority, to the contrary, any levy, assessment or collection of any amount by way of tax or penalty made or purporting to have been made on the sale of goods specified in item 25 of Schedule "A" to the Himachal Pradesh General Sales Tax Act, 1968 (hereinafter called the principal Act) during the period commencing from the 1st day of April, 1978 and ending with the 9th day of June, 1978 in relation to the sale of Indian made foreign liquor including wines and beer, and the period commencing from the 1st day of April, 1978 and ending with the 4th day of December, 1978 in relation to the sale of foreign liquor, and any action or thing taken or done or purporting to have been taken or done in relation to such levy, assessment or collection under the provisions of the principal Act shall be deemed to be valid and effective as if such levy, assessment, collection or action or thing was made, taken or done under the principal Act, as amended by the Himachal Pradesh General Sales Tax (Amendment) Act, 1978 and as if the said amending Act had come into force with effect from the 1st day of April, 1978 and the notification No. EXN. 1(4)/74, dated the 8th June, 1978 published in the Rajpatra, Himachal Pradesh (Extraordinary), dated the 9th June, 1978 and the notification No. EXN. 1 (4)/74, dated 28th November, 1978, published in the Rajpatra, Himachal Pradesh (Extraordinary), dated the 4th December, 1978, were issued on the 1st day of April, 1978, and were in force during the said period, accordingly:—

- (a) all acts, proceedings or things done or actions taken by the State Government or by any officer of the State Government or by any authority, in connection with the levy, assessment or collection of such tax or penalty shall, for all purposes, be deemed to be and to have always been done or taken in accordance with law;
- (b) no suit or other proceedings shall be maintained or continued in any court or before any authority for the refund of any such tax or penalty so collected;
- (c) no court or authority shall enforce a decree or order directing the refund of any such tax or penalty so collected;

Validation  
of levy and  
collection of  
tax on the  
sale of goods  
specified in  
item 25 of  
Schedule  
"A" to the  
Himachal  
Pradesh  
General  
Sales Tax  
Act, 1968  
(No. 24 of  
1968).

24 of 1968

17 of 1978

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- (d) any tax levied or purported to have been levied on the goods specified under item 25 of Schedule 'A' of the principal Act, in respect of the period commencing on the 1st day of April, 1978 and ending with the 9th day of June, 1978 in relation to the sale of Indian made foreign liquor including wines and beer and the period commencing on the 1st day of April, 1978 and ending with the 4th day of December, 1978 in relation to the sale of foreign liquor, but not collected, may be recovered in the manner provided in the principal Act; and
- (e) any tax due on the goods specified under item 25 of Schedule 'A' to the principal Act, in respect of the period commencing on the 1st day of April, 1978 and ending with the 9th day of June, 1978 in relation to the sale of Indian made foreign liquor including wines and beer and the period commencing on the 1st day of April, 1978 and ending with the 4th day of December, 1978 in relation to the foreign liquor, but not assessed and collected, may be assessed and recovered in the manner provided in the principal Act.

## STATEMENT OF OBJECTS AND REASONS

With a view to discourage the consumption of the liquor (Foreign liquor and Indian made foreign liquor including wines and beer), it was felt necessary to increase the cost of such liquor by raising the sales tax from 10% to 20% at source. This decision was taken while announcing the Excise Policy for the year, 1978-79. In order to implement the decision, necessary legislation to amend the Himachal Pradesh General Sales Tax Act, 1968 was taken in hand. Due to certain administrative difficulties, the notifications to this effect could not be issued in time. Though subsequently the notifications were issued on the 8th June, 1978 and the 28th November, 1978, the tax at the rate of 20% was recovered with effect from 1-4-1978. In order to validate the levy and collection of tax on sale of Indian made foreign liquor including wines and beer during the period 1-4-1978 to 9-6-1978 and on the sale of Foreign liquor during the period 1-4-1978 to 4-12-1978, it is necessary to have the provisions in law regulating the levy and collection of sales tax as in force in the State.

The Bill seeks to achieve the aforesaid objective.

SIMLA:  
The 20th March, 1978.

JAGDEV CHAND,  
Minister-in-charge.

## FINANCIAL MEMORANDUM

Clause 2 of the Bill seeks to regularise the levy and collection of tax during the period 1-4-1978 to 4-12-1978 on the sale of Foreign liquor and Indian made foreign liquor including wines and beer to the tune of Rs. 12,00,000.

## MEMORANDUM REGARDING DELEGATED LEGISLATION

Nil

## RECOMMENDATIONS OF THE GOVERNOR UNDER ARTICLE 207 OF THE CONSTITUTION OF INDIA

[Excise and Taxation Department file No. EXN. 1 (4)/74-Sectt.]

The Governor of Himachal Pradesh, having been informed of the subject matter of the Himachal Pradesh General Sales Tax (Validation) Bill, 1979, recommends, under Article 207 of the Constitution of India, the introduction and consideration of the Bill in the Legislative Assembly.

शिमला-171004, 21 मार्च, 1979

संख्या 1-29/79-वि० स०.—हिमाचल प्रदेश विधान सभा कार्य संचालन एवं प्रक्रिया नियमावली, 1973 के नियम 135 के अन्तर्गत, दा हिमाचल प्रदेश प्रोहिविशन आफ काऊ स्लाटर बिल, 1979 (बिल नम्बर 8 आफ 1979) जो हिमाचल प्रदेश विधान सभा में 20 मार्च, 1979 को पुरस्थापित किया गया है, सर्वसाधारण की सूचनार्थ राजपत्र में मुद्रित करने के लिए प्रेषित किया जाता है।

वेद प्रकाश भट्टागर,  
सचिव।

Bill No. 8 of 1979.

**THE HIMACHAL PRADESH PROHIBITION OF COW  
SLAUGHTER BILL, 1979**

(AS INTRODUCED IN THE LEGISLATIVE ASSEMBLY)

A

**BILL***to prohibit the slaughter of cow and its progeny in Himachal Pradesh.*

BE it enacted by the Legislative Assembly of Himachal Pradesh in the Thirtieth Year of the Republic of India as follows:—

1. (1) This Act may be called the Himachal Pradesh Prohibition of Cow Slaughter Act, 1979.

(2) It extends to the whole of the State of Himachal Pradesh.

(3) It shall come into force at once.

2. In this Act, unless there is anything repugnant to the subject or context,—

(a) “beef” means flesh of cow in any form but does not include flesh of cow contained in sealed containers and imported into Himachal Pradesh;

(b) “beef products” include extraction from beef;

(c) “cow” includes a bull, bullock, ox, heifer or calf;

(d) “prescribed” means prescribed by rules made under this Act;

(e) “slaughter” means killing by any method whatsoever and includes maiming and inflicting of physical injury which in the ordinary course will cause death;

(f) “Government” means the Government of Himachal Pradesh; and

(g) “uneconomic cow” includes stray, unprotected, infirm, disabled, diseased or barren cow.

3. Notwithstanding anything contained in any other law for the time being in force or any usage or custom to the contrary, no person shall slaughter or cause to be slaughtered or offer or cause to be offered for slaughter any cow in any place in Himachal Pradesh:

Provided that killing of a cow by accident or in self-defence will not be considered as slaughter under the Act.

Short title,  
extent and  
commencement,

Definitions

Prohibition  
of slaughter

4. (1) Nothing in section 3 shall apply to the slaughter of a cow;—

(a) whose suffering is such as to render its destruction desirable according to the certificate of the Veterinary Officer of the area or such other officer of the Animal Husbandry Department as may be prescribed; or

(b) which is suffering from any contagious or infectious disease notified as such by the Government; or

(c) which is subject to experimentation in the interest of medical and public health research by a certified medical practitioner of the Animal Husbandry Department;

Exceptions

(2) Where it is intended to slaughter a cow for the reasons specified in clause (a) or clause (b) of sub-section (1) it shall be incumbent for a person

doing so to obtain a prior permission in writing of the Veterinary Officer of the area or such other officer of the Animal Husbandry Department as may be prescribed.

Prohibition of sale of beef.

5. Except as herein excepted and notwithstanding anything contained in any other law for the time being in force, no person shall sell or offer for sale or cause to be sold beef or beef products in any form except for such medicinal purposes as may be prescribed.

Establishment of institutions.

6. There shall be established by the Government or by any local authority, when so directed by the Government institutions for the reception, maintenance and care of uneconomical cows.

Levy of fees.

7. The State Government or the local authority, if so authorised, may levy such fees as may be prescribed for care and maintenance of uneconomical cows in the institution.

Penalty

8. (1) Whoever contravenes or attempts to contravene or abets the contravention of the provisions of section 3 or 5 shall be guilty of an offence punishable with rigorous imprisonment for a term which may extend to five years, or with fine which may extend to five thousand rupees, or with both.

(2) Whoever fails to lodge the information in the manner and within the time stated in sub-section (2) of section 4 shall be guilty of an offence punishable with simple imprisonment for a term which may extend to one year or with fine which may extend to two hundred rupees, or with both.

(3) In any trial for an offence under sub-section (1) or sub-section (2) the burden of proving that the slaughtered cow belonged to the class specified in clauses (a) or (b) of sub-section (1) of section 4 shall be on the accused.

Offences to be cognizable and non-bailable.

9. Notwithstanding anything contained in the Code of Criminal Procedure, 1973 an offence punishable under sub-section (1) of section 8 shall be cognizable and non-bailable.

Power to make rules.

10. (1) The State Government may make rules for the purpose of carrying into effect the provisions of this Act.

(2) Without prejudice to the generality of the foregoing powers, such rules may provide for,—

- (a) the conditions and the circumstances under which cows may be slaughtered under sub-section (1) of section 4;
- (b) the manner in which diseases shall be notified under clause (b) of sub-section (1) of section 4;
- (c) the manner in which permission shall be obtained under sub-section (2) of section 4;
- (d) the forms and contents of the certificate mentioned in sub-clause (a) of sub-section (1) of section 4 and the authorities competent to grant it;
- (e) the manner in which and conditions under which beef or beef products are to be sold under section 5;
- (f) the matters relating to the establishment, maintenance, management, supervision and control of institutions referred to in section 6;
- (g) the duties of any officer or authority having jurisdiction under this

Act, the procedure to be followed by such officer or authority; and

(h) the matters which are to be and may be prescribed.

(3) Every rule made under this Act shall be laid as soon as may be after it is made, before the Legislative Assembly while it is in session for a total period of not less than fourteen days, which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, the Assembly makes any modification in the rule or decides that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so, however, that such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

**11.** (1) The Punjab Prohibition of Cow Slaughter Act, 1955 in its application to the territories added to Himachal Pradesh under section 5 of the Punjab Re-organisation Act, 1966 is hereby repealed.

Repeal and savings.

(2) Notwithstanding such repeal anything done, action taken, rules made or notification issued in exercise of the powers conferred by or under the provisions of the Act so repealed, to the extent of their being consistent with the provisions of this Act, shall be deemed to have been done, taken, made or issued in exercise of the powers conferred by or under this Act, as if this Act was in force on the day on which such thing was done, action taken, rules made or notification issued.

15 of 1956  
31 of 1966

## STATEMENT OF OBJECTS AND REASONS

Article 48 of the Constitution of India enjoins on the State Government to organise agricultural and animal husbandry on modern and scientific lines and in particular to take steps for preserving and improving the breeds and prohibiting slaughter of cow and its progeny. Since the mainstay of the people of this State is the agriculture and the mechanical power is not used in the difficult terrains of this Pradesh the bullock power as well as manure has its great significance. In view of this consideration, the cow and its progeny must be saved. With a view to provide milk, bullock power as well as manure, it becomes imperative to impose complete ban on cow slaughter. The Punjab Prohibition of Cow Slaughter Act, 1955, which provides for the ban on cow slaughter, is in force in the areas transferred to Himachal Pradesh under the provisions of section 5 of the Punjab Re-organisation Act, 1966, but there is no such law in force in the territory comprised in Himachal Pradesh immediately prior to the 1st November, 1966. With a view to bringing about uniformity it is necessary to enact the aforesaid law afresh for the whole of Himachal Pradesh repealing the Punjab Act.

This Bill seeks to achieve the aforesaid objects.

SIMLA:  
The 20th March, 1979.

BACHITTER SINGH,  
Minister-in-charge,

## FINANCIAL MEMORANDUM

Clause 6 of the Bill provides for the establishment of institutions for the reception, maintenance and care of un-economical cows. For this purpose some expenditure from the State exchequer is likely to be incurred. Since this expenditure would depend on the number of un-economical cows, the exact expenditure cannot be anticipated. There will, however, be no other expenditure as the implementation of the Bill will be carried through the agency of the existing staff.

Clause 7 of the Bill provides that the State Government or the local authority if so authorised may levy such fees as may be prescribed for care and maintenance of uneconomic cows in the institutions. As to how much income will accrue to the Government from such fees cannot exactly be anticipated.

## MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 10 of the Bill empowers the Government to make rules in respect of the matters enumerated therein. The proposed delegation is essential and normal in character.

**RECOMMENDATIONS OF THE GOVERNOR UNDER ARTICLE  
207 OF THE CONSTITUTION OF INDIA  
[ANIMAL HUSBANDRY DEPARTMENT FILE NO. AHY-A(3)-1/74]**

The Governor of Himachal Pradesh having been informed of the subject matter of the Himachal Pradesh Prohibition of Cow Slaughter Bill, 1979, recommends, under Article 207 of the Constitution of India, the introduction and consideration of the said Bill, in the Legislative Assembly.

शिमला-171004, 21 मार्च, 1979

संख्या 1-18/79-वि० स०.—हिमाचल प्रदेश विधान सभा प्रक्रिया एवं कार्य संचालन नियमावली, 1973 के नियम 135 के अन्तर्गत, दा हिमाचल प्रदेश हाउसिंग बोर्ड (अमैडमैन्ट) बिल, 1979 (बिज नम्बर 11 आफ 1979) जो हिमाचल प्रदेश विधान सभा में 20 मार्च, 1979 को पुरस्थापित किया गया है, सर्वसाधारण की सूचनार्य राजपत्र में मुद्रित करने के लिए प्रेषित किया जाता है।

वेद प्रकाश भट्टनागर,  
सचिव ।

Bill No. 11 of 1979.

**THE HIMACHAL PRADESH HOUSING BOARD (AMENDMENT)  
BILL, 1979**

(AS INTRODUCED IN THE LEGISLATIVE ASSEMBLY)

A

**BILL**

*further to amend the Himachal Pradesh Housing Board Act, 1972 (Act No. 10 of 1972).*

BE it enacted by the Legislative Assembly of Himachal Pradesh in the Thirtieth Year of the Republic of India as follows:—

1. (1) This Act may be called the Himachal Pradesh Housing Board (Amendment) Act, 1979.

Short title  
and com-  
mencement.

(2) It shall come into force at once.

2. In sub-section (2) of section 25 of the Himachal Pradesh Housing Board Act, 1972, the following amendments shall be made, namely,—

Amendment  
of section 25.

(a) for the sign “.” occurring at the end of clause (d), the sign “;” shall be substituted; and

(b) after clause (d) so amended the following clause (e) shall be inserted:—

“(e) an industrial area development scheme.”

## STATEMENT OF OBJECTS AND REASONS

Sub-section (2) of section 25 of the Himachal Pradesh Housing Board Act, 1972 does not cover the industrial area development schemes as housing schemes undertaken by the Himachal Pradesh Housing Board. Consequently, the said Board is not in a position to procure the funds from the Industrial Development Bank for the purpose of development of the industrial areas in the State. To achieve this object, amendment in the Himachal Pradesh Housing Board Act, 1972 is necessary.

This Bill seeks to achieve the aforesaid objective.

BACHITTER SINGH,

SIMLA:

Minister-in-charge.

The 20th March, 1979.

## FINANCIAL MEMORANDUM

Nil

## MEMORANDUM REGARDING DELEGATED LEGISLATION

Nil

शिमला-171004, 21 मार्च, 1979

संख्या 1-16/79-वि० स०.—हिमाचल प्रदेश विधान सभा प्रक्रिया एवं कार्य संचालन नियमावली, 1973 के नियम 135 के अन्तर्गत, दा हिमाचल प्रदेश चिल्डरन बिल, 1979 (बिल नम्बर 12 आफ 1979) जो हिमाचल प्रदेश विधान सभा में 20 मार्च, 1979 को पुरस्थापित किया गया है, सर्वसाधारण की सूचनार्थ राजपत्र में मुद्रित करने के लिए प्रेषित किया जाता है।

वेद प्रकाश भट्टनागर,  
सचिव ।

Bill No. 12 of 1979.

## THE HIMACHAL PRADESH CHILDREN BILL, 1979

(AS INTRODUCED IN THE LEGISLATIVE ASSEMBLY)

A

## BILL

*to provide for the care, protection, maintenance, welfare, training, education and rehabilitation of the neglected and delinquent children and for the trial of delinquent children in Himachal Pradesh.*

Be it enacted by the Legislative Assembly of Himachal Pradesh in the Thirtieth Year of the Republic of India, as follows:—

## CHAPTER I

## PRELIMINARY

1. (1) This Act may be called the Himachal Pradesh Children Act, 1979.

Short title,  
extent and  
commencement.

(2) It extends to the whole of Himachal Pradesh.

(3) It shall come into force on such date as the Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different areas thereof.

2. In this Act, unless the context otherwise requires,—

Definitions.

(a) "begging" means,—

(i) soliciting or receiving alms in a public place or entering on any private premises for the purpose of soliciting or receiving alms, whether under the pretence of singing, dancing, fortune-telling, performing tricks or selling articles or otherwise;

(ii) exposing or exhibiting with the object of obtaining or extorting alms, any sore, wound, injury, deformity or disease, whether of himself or of any other person or of an animal;

(iii) allowing oneself to be used as an exhibit for the purpose of soliciting or receiving alms;

(b) "board" means a child welfare board constituted under section 4;

(c) "brothel", "prostitute", "prostitution" and "public place" shall have the meanings respectively assigned to them in the Suppression of Immoral Traffic in Women and Girls Act, 1956;

(d) "child" means a boy who has not attained the age of sixteen years or a girl who has not attained the age of eighteen years;

(e) "children's court" means a court constituted under section 5;

(f) "children's home" means an institution established or certified by the Government under section 9 as a children's home;

(g) "competent authority" means, in relation to neglected children, a board constituted under section 4 and in relation to delinquent children a children's court constituted under section 5 and where

no such board or children's court has been constituted, includes any court empowered under sub-section (2) of section 7 to exercise the powers conferred on a board or children's court;

- (h) "dangerous drug" shall have the meaning assigned to it in the Dangerous Drugs Act, 1930;
- (i) "delinquent child" means a child who has been found to have committed an offence;
- (j) "Government" means the Government of Himachal Pradesh;
- (k) "fit person" or "fit institution" means any person or institution (not being a police station or jail) found fit by the competent authority to receive and take care of a child entrusted to his or its care and protection on the terms and conditions specified by the competent authority;
- (l) "guardian" in relation to a child, includes any person who, in the opinion of the competent authority having cognizance of any proceeding in relation to a child, has, for the time being, the actual charge of, or control over, that child;
- (m) "neglected child" means a child who—
  - (i) is found begging, or
  - (ii) is found without having any home or settled place of abode or any ostensible means of subsistence or is found destitute, whether he is an orphan or not, or
  - (iii) has a parent or guardian who is unfit or unable to exercise or does not exercise proper care and control over the child, or
  - (iv) lives in a brothel or with a prostitute or frequently goes to any place used for the purpose of prostitution, or is found to associate with any prostitute or any other person who leads an immoral, drunken or depraved life;
- (n) "observation home" means any institution or place established or recognised by the Government under section 11 as an observation home;
- (o) "offence" means an offence punishable under any law for the time being in force;
- (p) "place of safety" means any place or institution (not being a police station or jail), the person-in-charge of which is willing temporarily to receive and take care of a child and which in the opinion of the competent authority may be a place of safety for the child;
- (q) "prescribed" means prescribed by rules made under this Act;
- (r) "probation officer" means an officer appointed as a probation officer under this Act or under the Probation of Offenders Act, 1958;
- (s) "special school" means an institution established or certified by the Government under section 10;
- (t) "supervision" in relation to a child placed under the care of a parent, guardian or other fit person or fit institution under this Act, means the supervision of that child by a probation officer for the purpose of ensuring that the child is properly looked after and that the conditions imposed by the competent authority are complied with; and
- (u) all words and expressions used but not defined in this Act and defined in the Code of Criminal Procedure, 1973 shall have the meanings assigned to them in that Code.

3. Where an inquiry has been initiated against a child and during the course of such inquiry the child ceases to be such, then, notwithstanding anything contained in this Act or in any other law for the time being in force, the inquiry may be continued and orders may be made in respect of such person as if such person had continued to be a child.

Continua-  
tion of in-  
quiry in  
respect on  
a child who  
has ceased  
to be a  
child.

## CHAPTER II

### COMPETENT AUTHORITIES AND INSTITUTIONS FOR CHILDREN

4. (1) The Government may, by notification in the Official Gazette, constitute for any area specified in the notification, one or more child welfare boards for exercising the powers and discharging the duties conferred or imposed on such board in relation to neglected children under this Act.

Child wel-  
fare boards.

(2) A board shall consist of a chairman and such other members, as the Government thinks fit to appoint, of whom not less than one shall be a woman; and every such member shall be vested with the powers of a magistrate under the Code of Criminal Procedure, 1973.

(3) The board shall function as a bench of magistrates and shall have the powers conferred by the Code of Criminal Procedure, 1973, on a judicial magistrate of first class.

2 of 1974. 5. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 the Government may, by notification in the Official Gazette, constitute, for any area specified in the notification, one or more children's courts for exercising the powers and discharging the duties conferred or imposed on such court in relation to delinquent children under this Act.

Children's  
court.

2 of 1974. (2) A children's court shall consist of such number of judicial magistrates of first class, forming a bench, as the Government thinks fit to appoint, of whom one shall be designated as the principal magistrate; and every such bench shall have the powers conferred by the Code of Criminal Procedure, 1973, on a judicial magistrate of first class.

(3) Every children's court shall be assisted by a panel of two honorary social workers possessing such qualifications as may be prescribed, of whom at least one shall be a woman and such panel shall be appointed by the Government.

6. (1) In the event of any difference of opinion among the members of a board or among the magistrates of a children's court, the opinion of the majority shall prevail, but where there is no such majority, the opinion of the chairman or of the principal magistrate, as the case may be, shall prevail.

Procedure  
etc. in rela-  
tion to  
boards and  
children's  
courts.

(2) A board or children's court may act notwithstanding the absence of any member of the board, or, as the case may be, any magistrate of the children's court, and no order made by the board or children's court shall be invalid by reason only of the absence of any member or magistrate, as the case may be, during any stage of the proceeding.

(3) No person shall be appointed as a member of the board or as a magistrate in the children's court unless he has, in the opinion of the Government, special knowledge of child psychology and child welfare.

Powers of  
board and  
children's  
court.

7. (1) Where a board or a children's court has been constituted for any area, such board or court shall, notwithstanding anything contained in any other law for the time being in force but save as otherwise expressly provided in the Act, have power to deal exclusively with all proceedings under this Act relating to neglected children or delinquent children, as the case may be:

Provided that a board or a children's court may, if it is of opinion that it is necessary so to do having regard to the circumstances of the case, transfer any proceedings to any children's court or board, as the case may be:

Provided further that where there is any difference of opinion between a board and a children's court regarding the transfer of any proceedings under the first proviso, it shall be referred to the chief judicial magistrate for decision and in a case where the district magistrate is functioning as a board or a children's court, such difference of opinion shall be referred to the court of session and the decision of the chief judicial magistrate or, as the case may be, the court of session on such reference shall be final.

(2) Where no board or children's court has been constituted for any area, the powers conferred on the board or the children's court by or under this Act shall be exercised in that area, only by the following, namely:—

- (a) the chief judicial magistrate, or
- (b) any judicial magistrate of first class.

(3) The powers conferred on the board or children's court by or under this Act may also be exercised by the High court and the court of session when the proceedings come before them in appeal, revision or otherwise.

Procedure  
to be fol-  
lowed by a  
magistrate  
not em-  
powered un-  
der the Act.

8. (1) When any magistrate not empowered to exercise the powers of a board or a children's court under this Act is of opinion that a person brought before him under any of the provisions of this Act (otherwise than for the purpose of giving evidence) is a child, he shall record such opinion and forward the child and the record of the proceedings to the competent authority having jurisdiction over the proceeding.

(2) The competent authority to which the proceeding is forwarded under sub-section (1) shall hold the inquiry as if the child had originally been brought before it.

Children's  
homes.

9. (1) The Government may establish and maintain as many children's homes as may be necessary for the reception of neglected children under this Act.

(2) Where the Government is of opinion that any institution other than an institution established under sub-section (1) is fit for the reception of the neglected children to be sent thereunder this Act, it may certify such institution as a children's home for the purposes of this Act.

(3) Every children's home to which a neglected child is sent under this Act shall not only provide the child with accommodation, maintenance and facilities for education, but also provide him with facilities for the development of his character and abilities and give him necessary training for protecting himself against moral dangers or exploitation and shall also perform such other

functions as may be prescribed to ensure all round growth and development of his personality.

(4) The Government may, by rules made under this Act, provide for the management of children's homes including the standards and the nature of services to be maintained by them and the circumstances under which, and the manner in which the certificate of a children's home may be granted or withdrawn.

10. (1) The Government may establish and maintain as many special schools as may be necessary for the reception of delinquent children under this Act.

Special schools.

(2) Where the Government is of opinion that any institution other than an institution established under sub-section (1) is fit for the reception of the delinquent children to be sent there under this Act, it may certify such institution as a special school for the purposes of this Act.

(3) Every special school to which a delinquent child is sent under this Act shall not only provide the child with accommodation, maintenance and facilities for education but also provide him with facilities for the development of his character and abilities and give him necessary training for his reformation and shall also perform such other functions as may be prescribed to ensure all round growth and development of his personality.

(4) The Government may, by rules made under this Act, provide for the management of special schools including the standards and the nature of services to be maintained by them and the circumstances under which, and the manner in which the certificate of a special school may be granted or withdrawn.

11. (1) The Government may establish and maintain as many observation homes as may be necessary for the temporary reception of children during the pendency of any inquiry regarding them under this Act.

Observation homes.

(2) Where the Government is of opinion that any institution other than an institution established under sub-section (1) is fit for the temporary reception of children during pendency of any inquiry regarding them under this Act, it may recognise such institution as an observation home for the purposes of this Act.

(3) Every observation home to which a child is sent under this Act shall not only provide the child with accommodation, maintenance and facilities for medical examination and treatment, but also provide him with facilities for useful occupation.

(4) The Government may, by rules made under this Act, provide for the management of observation homes including the standards and the nature of services to be maintained by them and the circumstances under which, and the manner in which, an institution may be recognised as an observation home or the recognition may be withdrawn.

12. The Government may, by rules made under this Act, provide—

After-care organisations.

(a) for the establishment or recognition of after-care organisations and the powers that may be exercised by them for effectively carrying out their functions under this Act;

(b) for a scheme of after-care programme to be followed by such after-care organisation for the purpose of taking care of children after they leave children's home or special schools and for the purpose of enabling them to lead an honest, industrious and useful life;

- (c) for the preparation and submission of a report by the probation officer in respect of each child prior to his discharge from a children's home or special school, as the case may be, regarding the necessity and nature of after-care of such child, the period of such after-care, supervision thereof and for the submission of a report by the probation officer on the progress of each such child;
- (d) for the standards and the nature of services to be maintained by such after-care organisations; and
- (e) for such other matters as may be necessary for the purpose of effectively carrying out the scheme of after-care programme of children.

### CHAPTER III

#### NEGLECTED CHILDREN

Production  
of neglected  
children  
before  
boards.

13. (1) If any police officer or any other person authorised by the Government in this behalf, by general or special order, is of opinion that a person is apparently a neglected child, such police officer or other person may take charge of that person for bringing him before a board.

(2) When information is given to an officer-in-charge of a police station about any neglected child found within the limits of such station, he shall enter in a book to be kept for the purpose the substance of such information and take such action thereon as he deems fit and if such officer does not propose to take charge of the child, he shall forward a copy of the entry made to the board.

(3) Every child taken charge of under sub-section (1) shall be brought before the board within a period of twenty-four hours of such charge taken excluding the time necessary for the journey from the place where the child had been taken charge of to the board.

(4) Every child taken charge of under sub-section (1) shall, unless he is kept with his parent or guardian, be sent to an observation home (but not to a police station or jail) until he can be brought before a board.

Special pro-  
cedure to  
be followed  
when neg-  
lected child  
has parent.

14. (1) If a person, who in the opinion of the police officer or of the authorised person is a neglected child, has a parent or guardian who has the actual charge of or control over, the child, the police officer or the authorised person may, instead of taking charge of the child, make a report to the board for initiating an inquiry regarding that child.

(2) On receipt of a report under sub-section (1), the board may call upon the parent or guardian to produce the child before it and to show cause why the child should not be dealt with as a neglected child under the provisions of this Act and if it appears to the board that the child is likely to be removed from its jurisdiction or to be concealed, it may immediately order his removal (if necessary by issuing a search warrant for the immediate production of the child) to an observation home or a place of safety.

Inquiry by  
board re-  
garding neg-  
lected chil-  
dren.

15. (1) When a person alleged to be a neglected child is produced before a board, it shall examine the police officer or the authorised person who brought the child or made the report and record the substance of such examination and hold the inquiry in the prescribed manner and may make such orders in relation to the child as it may deem fit.

(2) Where a board is satisfied on inquiry that a child is a neglected and that it is expedient so to deal with him, the board may make an order directing the child to be sent to a children's home for the period until he ceases to be a child:

Provided that the board may, for reasons to be recorded, extend the period of such stay, but in no case the period of stay shall extend beyond the time when the child attains the age of eighteen years, in the case of a boy, or twenty years, in the case of a girl:

Provided further that the board may, if it is satisfied that having regard to the circumstances of the case it is expedient so to do, for reasons to be recorded, reduce the period of stay to such period as it thinks fit.

(3) During the pendency of any inquiry regarding a child, the child shall, unless he is kept with his parent or guardian, be sent to an observation home or a place of safety for such period as may be specified in the order of the board:

Provided that no child shall be kept with his parent or guardian if, in the opinion of the board, such parent or guardian is unfit or unable to exercise or does not exercise proper care and control over the child.

**16.** (1) If the board so thinks fit, it may, instead of making an order under sub-section (2) of section 15 for sending the child to a children's home, make an order placing the child under the care of a parent, guardian or other fit person, on such parent, guardian or fit person executing a bond with or without surety to be responsible for the good behaviour and well-being of the child and for the observance of such conditions as the board may think fit to impose.

(2) At the time of making an order under sub-section (1) or at any time subsequently, the board may, in addition, make an order that the child be placed under supervision for any period not exceeding three years in the first instance.

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), if at any time it appears to the board, on receiving a report from the probation officer, or otherwise, that there has been a breach of any of the conditions imposed by it in respect of the child, it may, after making such inquiry as it deems fit, order the child to be sent to a children's home.

**17.** Where a parent or guardian of a child complains to the board that he is not able to exercise proper care and control over the child and the board is satisfied on inquiry that proceedings under this Act should be initiated regarding the child, it may send the child to an observation home or a place of safety and make such further inquiry as it may deem fit and the provisions of sections 15 and 16 shall, as far as may be, apply to such proceedings.

Power to commit neglected child to suitable custody.

Uncontrollable children.

## CHAPTER IV

### DELINQUENT CHILDREN

**18.** (1) When any person accused of a bailable or non-bailable offence and apparently a child is arrested or detained or appears or is brought before a children's court, such person shall, notwithstanding anything contained in the Code of Criminal Procedure, 1973, or in any other law for the time being in force, be released on bail with or without surety but he shall not be so released if there appear reasonable grounds for believing that the release is likely to bring him into association with any reputed criminal or expose him to moral danger or that his release would defeat the ends of justice.

Bail and custody of children.

(2) When such person having been arrested is not released on bail under sub-section (1) by the officer-in-charge of the police station, such officer

shall cause him to be kept in an observation home or a place of safety in the prescribed manner (but not in a police station or jail) until he can be brought before a children's court.

(3) When such person is not released on bail under sub-section (1) by the children's court, it shall, instead of committing him to prison, make an order sending him to an observation home or a place of safety for such period during the pendency of the inquiry regarding him as may be specified in the order.

Information to parent or guardian or probation officer.

19. Where a child is arrested, the officer-in-charge of the police station to which the child is brought shall, as soon as may be after the arrest, inform—

- (a) the parent or guardian of the child, if he can be found, of such arrest and direct him to be present at the children's court before which the child will appear; and
- (b) the probation officer of such arrest in order to enable him to obtain information regarding the antecedents and family history of the child and other material circumstances likely to be of assistance to the children's court for making the inquiry.

Inquiry by children's court regarding delinquent children.

20. Where a child having been charged with an offence appears or is produced before a children's court, the children's court shall hold the inquiry in accordance with the provisions of section 41 and may, subject to the provisions of this Act, make such order in relation to the child as it deems fit.

Orders that may be passed regarding delinquent children.

21. (1) Where a children's court is satisfied on inquiry that a child has committed an offence, then, notwithstanding anything to the contrary contained in any other law for the time being in force, the children's court may, if it so thinks fit,—

- (a) allow the child to go home after advice or admonition;
- (b) direct the child to be released on probation of good conduct and placed under the care of any parent, guardian or other fit person, on such parent, guardian or other fit person executing a bond, with or without surety as that court may require, for the good behaviour and well being of the child for any period not exceeding three years;
- (c) make an order directing the child to be sent to a special school,—
  - (i) in the case of a boy over fourteen years of age or of a girl over sixteen years of age, for a period of not less than three years;
  - (ii) in the case of any other child, for the period until he ceases to be a child:

Provided that the children's court may, if it is satisfied that having regard to the nature of the offence and the circumstances of the case it is expedient so to do, for reasons to be recorded, reduce the period of stay to such period as it thinks fit:

Provided further that the children's court may, for reasons to be recorded, extend the period of such stay, but in no case the period of stay shall extend beyond the time when the child attains the age of eighteen years, in the case of a boy, or twenty years, in the case of a girl;

- (d) order the child to pay a fine if he is over fourteen years of age and earns money.

(2) Where an order under clause (b) or clause (d) of sub-section (1) is made, the children's court may, if it is of opinion that in the interests of the child and of the public it is expedient so to do, in addition, make an order that the delinquent child shall remain under the supervision of a probation officer named in the order during such period, not exceeding three years, as may be specified therein, and may in such supervision order impose such conditions as it deems necessary for the due supervision of the delinquent child:

Provided that if at any time afterwards it appears to the children's court on receiving a report from the probation officer or otherwise, that the delinquent child has not been of good behaviour during the period of supervision, it may, after making such inquiry as it deems fit, order the delinquent child to be sent to a special school.

(3) The children's court making a supervision order under sub-section (2) shall explain to the child and the parent, guardian or other fit person, as the case may be, under whose care the child is placed, the terms and conditions of the order and shall forthwith furnish one copy of the supervision order to the child, the parent, guardian or other fit person, as the case may be, the sureties, if any, and the probation officer.

(4) In determining the special school, or any person to whose custody a child is to be committed or entrusted under this Act, the court shall pay due regard to the religious denomination of the child to ensure that religious instruction contrary to the religious persuasion of the child is not imparted to him.

22. (1) Where a child is found to have committed an offence punishable with fine and the children's court is of opinion that the case would be best met by the imposition of a fine, whether with or without any other punishment, the said court may in any case, and shall if the child is under fourteen years of age, order that the fine be paid by the parent or guardian of the child, unless the said court is satisfied that the parent or guardian of the child, cannot be found or that he has not conducted to the commission of the offence by neglecting to exercise due care of the child.

Power to order parent to pay fine etc. instead of child.

(2) An order under this section may be made against a parent or guardian, who, having been required to attend, has failed to do so, but save as aforesaid, no such order shall be made, without giving the parent or guardian an opportunity of being heard.

(3) Where a parent or guardian is directed to pay a fine under this section, the amount may be recovered in accordance with the provisions of the Civil Procedure Code.

(4) A parent or guardian may appeal against any such order as if the order were a sentence passed in proceedings against himself.

23. (1) Notwithstanding anything to the contrary contained in any other law for the time being in force, no delinquent child shall be sentenced to death or imprisonment, or committed to prison in default of payment of fine or in default of furnishing security:

Orders that may not be passed against delinquent children.

Provided that where a child who has attained the age of fourteen years has committed an offence and the children's court is satisfied that the offence committed is of so serious a nature or that his conduct and behaviour

have been such that it would not be in his interest or in the interest of other children in a special school to send him to such special school and that none of the other measures provided under this Act is suitable or sufficient, the children's court may order the delinquent child to be kept in safe custody in such place and manner as it thinks fit and shall report the case for the orders of the Government.

(2) On receipt of a report from children's court under sub-section (1), the Government may make such arrangement in respect of the child as it deems proper and may order such delinquent child to be detained at such place and on such conditions as it thinks fit:

Provided that the period of detention so ordered shall not exceed the maximum period of imprisonment to which the child could have been sentenced for the offence committed.

Children under eight years.

**24.** The court shall not order a child under the age of eight years to be sent to a certified institution unless for any reason, including the want of a fit person of his own religious persuasion who is willing to undertake his care, the court is satisfied that he cannot suitably be dealt with otherwise.

Proceedings under chapter VIII of the Criminal Procedure Code not competent against child.

**25.** Notwithstanding anything to the contrary contained in the Code of Criminal Procedure, 1973, no proceeding shall be instituted and no order shall be passed against a child under chapter VIII of the said Code.

No joint trial of child and person not a child.

**26.** Notwithstanding anything contained in section 223 of the Code of Criminal Procedure, 1973, or in any other law for the time being in force, no child shall be charged with, or tried for, any offence together with a person who is not a child.

(2) If a child is accused of an offence for which under section 223 of the Code of Criminal Procedure, 1973, or in any other law for the time being in force, such child and any person who is not a child, but for the prohibition contained in sub-section (1), would have been charged and tried together, the court taking cognizance of that offence shall direct separate trials of the child and the other person.

Removal of disqualification attaching to conviction.

**27.** Notwithstanding anything contained in any other law, a child who has committed an offence and has been dealt with under the provisions of this Act shall not suffer disqualification, if any, attaching to a conviction of an offence under such law.

Special provision in respect of pending cases.

**28.** Notwithstanding anything contained in this Act, all proceedings in respect of a child pending in any court in any area on the date on which this Act comes into force, in that area, shall be continued in that court as if this Act had not been passed and if the court finds that the child has committed an offence, it shall record such finding and, instead of passing any sentence in respect of the child, forward the child to the children's court which shall pass orders in respect of that child in accordance with the provisions of this Act as if it had been satisfied on inquiry under this Act that the child has committed the offence.

## CHAPTER V

**PROCEDURE TO BE FOLLOWED BY COMPETENT AUTHORITIES AND CHILDREN'S COURT GENERALLY AND APPEAL AND REVISION FROM ORDERS OF SUCH AUTHORITIES/COURTS**

**29.** (1) A board or a children's court shall hold its sittings at such place, on such day and in such manner, as may be prescribed.

(2) Where no such separate court has been established the court, before which a child is brought, shall, whenever practicable, sit either in a different building or room from that in which the ordinary sittings of the court are held or on different days or at different times from those at which the ordinary sittings are held.

Sittings etc.,  
of boards and  
children's  
courts.

**30.** (1) Save as provided in this Act, no person shall be present at any sitting of a competent authority, except,—

- (a) any officer of the competent authority, or
- (b) the parties to the inquiry before the competent authority, the parent or guardian of the child and other persons directly concerned in the inquiry including police officers and legal practitioners, and
- (c) such other persons as the competent authority may permit to be present.

Persons who  
may be pre-  
sent before  
competent  
authority.

(2) Notwithstanding anything contained in sub-section (1) if at any stage during an inquiry, a competent authority considers it to be expedient in the interest of the child or on grounds of decency or morality that any person including the police officers, legal practitioners, the parent, guardian or the child himself should withdraw, the competent authority may give such direction, and if any person refuses to comply with such direction, the competent authority may have him removed and may, for this purpose, cause to be used such force as may be necessary.

(3) No legal practitioner shall be entitled to appear before the child welfare board in any case of proceedings before it, except with special permission of the board.

**31.** (1) Where a child is charged with any offence or is brought before a competent authority on an application for an order to send him to a special school, his parent or guardian may in any case, and shall, if he can be found and resides within a reasonable distance, be required to be present at any proceedings, unless the competent authority is satisfied that it would be unreasonable to require his attendance.

Attendance  
of parent  
of child  
charged  
with an  
offence etc.

(2) Where the child is arrested, the officer-in-charge of the police station to which he is brought shall cause the parent or guardian of the child, if he can be found to be directed to attend at the court before which the child will appear.

(3) The parent or guardian whose attendance shall be required under this section shall be the parent or guardian having the actual charge of, or control over, the child:

Provided that if such parent or guardian is not the father, the attendance of the father may also be required.

(4) The attendance of the parent of a child shall not be required under this section in any case where the child was, before the institution of the proceedings, removed from the custody or charge of his parent by an order of the competent authority.

(5) Nothing in this section shall be deemed to require the attendance of the mother or the female guardian of a child if such mother or female guardian does not according to the local customs and manners appear in public, but any such mother or female guardian may appear before the competent authority by a pleader or agent.

Dispensing with attendance of child.

**32.** If at any stage during the course of an inquiry, a competent authority is satisfied that the attendance of the child is not essential for the purpose of inquiry, the competent authority may, dispense with his attendance and proceed with the inquiry in the absence of the child.

Committal to approved place of child suffering from dangerous disease and its future disposal.

**33.** (1) When a child who has been brought before a competent authority under this Act is found to be suffering from a disease requiring prolonged medical treatment or physical or mental complaint that will respond to treatment, the competent authority may send the child to any place recognised to be an approved place in accordance with the rules made under this Act for such period as it may think necessary for the required treatment.

(2) Where a child is found to be suffering from leprosy or is of unsound mind, he shall be dealt with under the provisions of the Lepers Act, 1898 or the Indian Lunacy Act, 1912, as the case may be.

(3) Where a competent authority has taken action under sub-section (1) in the case of a child suffering from an infectious or contagious disease, the competent authority before restoring the said child to his partner in marriage, if there has been such, or to the guardian, as the case may be, shall where it is satisfied that such action will be in the interest of the said child call upon his partner in marriage or the guardian, as the case may be, to satisfy the competent authority by submitting to medical examination that such partner or guardian will not re-infect the child in respect of whom the order has been passed.

Presumption and determination of age.

**34.** (1) Where it appears to a competent authority that person brought before it under any of the provisions of this Act (otherwise than for the purpose of giving evidence) is a child, the competent authority shall make due inquiry as to the age of that person and for that purpose shall take such evidence as may be necessary and shall record a finding whether the person is a child or not, stating his age as nearly as may be.

(2) No order of a competent authority shall be deemed to have become invalid merely by any subsequent proof that the person in respect of whom the order has been made is not a child, and the age recorded by the competent authority to be the age of the person so brought before it shall, for the purposes of this Act, be deemed to be the true age of that person.

**35.** In making any order in respect of a child under this Act, a competent authority shall take into consideration the following circumstances, namely:—

- (a) the age of the child;
- (b) the circumstances in which the child is living;
- (c) the reports made by the probation officer;
- (d) the religious persuasion of the child;

3 of 1898.

4 of 1912.

Circumstances to be taken into consideration in making orders under the Act.

(e) such other circumstances as may, in the opinion of the competent authority, require to be taken into consideration in the interests of the child:

Provided that in the case of a delinquent child, the above circumstances shall be taken into consideration after the children's court has recorded a finding against the child that he has committed the offence:

Provided further that if no report of the probation officer is received within ten weeks of his being informed under section 19, it shall be open to the children's court to proceed without it.

**36.** In the case of a neglected or delinquent child whose ordinary place of residence lies outside the jurisdiction of the competent authority before which he is brought, the competent authority may, if satisfied after due inquiry that it is expedient so to do, send the child back to a relative or other person who is fit and willing to receive him at his ordinary place of residence and exercise proper care and control over him, notwithstanding that such place of residence is outside the jurisdiction of the competent authority; and the competent authority exercising jurisdiction over the place to which the child is sent shall in respect of any matter arising subsequently have the same powers in relation to the child as if the original order had been passed by itself.

Sending a child outside jurisdiction.

**37.** The report of the probation officer or any circumstances considered by the competent authority under section 35 shall be treated as confidential:

Reports to be treated as confidential.

Provided that the competent authority may, if it so thinks fit, communicate the substance thereof to the child or his parent or guardian and may give such child, parent or guardian an opportunity of producing such evidence as may be relevant to the matter stated in the report.

**38.** (1) No report in any newspaper, magazine or news sheet of any inquiry regarding a child under this Act shall disclose the name, address or school or any other particulars calculating to lead to the identification of the child, nor shall any picture of any such child be published:

Prohibition of publication of names etc. of children involved in any proceeding under the Act.

Provided that for reasons to be recorded in writing, the authority holding the inquiry may permit such disclosure, if in its opinion such disclosure is in the interest of the child.

(2) Any person contravening the provisions of sub-section (1) shall be punishable with fine which may extend to one thousand rupees.

**39.** (1) Subject to the provisions of this section, any person aggrieved by an order made by a competent authority under this Act may, within thirty days from the date of such order, prefer an appeal to the court of session:

Appeals.

Provided that the court of session may entertain the appeal after the expiry of the said period of thirty days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) No appeal shall lie from—

- (a) any order of acquittal made by the children's court in respect of a child alleged to have committed an offence ; or
- (b) any order made by a board in respect of a finding that a person is not a neglected child.

(3) No second appeal shall lie from any order of the court of session passed in appeal under this section.

Revision.

40. The High Court may, at any time, either of its own motion or on an application received in this behalf, call for the record of any proceeding in which any competent authority or court of session has passed an order for the purpose of satisfying itself as to the legality or propriety of any such order and may pass such order in relation thereto as it thinks fit:

Provided that the High Court shall not pass an order under this section prejudicial to any person without giving him a reasonable opportunity of being heard.

Procedure  
in inquiries,  
appeal and  
revision  
proceedings.

41. (1) Save as otherwise expressly provided by this Act, a competent authority while holding any inquiry under any of the provisions of this Act, shall follow such procedure as may be prescribed and subject thereto, shall follow, as far as may be, the procedure laid down in the Code of Criminal Procedure, 1973, for trials in summons cases.

2 of 1974

(2) Save as otherwise expressly provided by or under this Act, the procedure, to be followed in hearing appeal or revision proceedings under this Act shall be, as far as practicable in accordance with the provisions of the Code of Criminal Procedure, 1973.

2 of 1974

Powers to  
amend or-  
ders.

42. (1) Without prejudice to the provisions for appeal and revision under this Act any competent authority may, either on its own motion or on an application received in this behalf, amend any order as to the institution to which a child is to be sent or as to the person under whose care or supervision a child is to be placed under this Act.

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(2) Clerical mistakes in orders passed by a competent authority or errors arising therein from any accidental slip or omission may, at any time, be corrected by the competent authority either on its own motion or on an application received in this behalf.

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## CHAPTER VI

### SPECIAL OFFENCES IN RESPECT OF CHILDREN

Punishment  
for cruelty  
to children.

43. (1) Whoever, having attained the age of 16 years in case of a male and 18 years in case of a female person and having the actual charge of, or control over, a child, abandons, exposes or wilfully neglects or causes or procures him to be abandoned, neglected or exposed, in a manner likely to cause such child unnecessary suffering or injury to his health shall be punishable with imprisonment of either description for a term which may extend to six months, or with fine which may extend to two hundred rupees, or with both.

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(2) Whoever, being an employer of a child, overworks him to an extent or ill-treats him in a manner, so as to amount to gross cruelty, shall be punishable with imprisonment of either description for a term which may extend to six months, or with fine which may extend to two hundred rupees, or with both.

(3) For the purposes of this section, injury to health includes injury to, or loss of, sight or hearing and injury to limb or organ of the body and any mental derangement, and a parent or other person legally liable to maintain a child shall be deemed to have neglected him in a manner likely to cause injury to his health if, having means to provide adequate food, clothing, medical aid or lodging for the child, fails to make such provision.

(4) Any person may be convicted of an offence under this section notwithstanding that the actual suffering or injury to health was obviated by the action of another person.

(5) Nothing in this section shall be construed to take away or effect the right of any parent, teacher or other person having the lawful control or charge of a child to administer punishment to such child.

**44.** (1) Whoever causes any child or having the actual charge of, or control over, a child allows that child to be in any street, premises or place for the purposes of begging or receiving alms, or of inducing the giving of alms, shall be punishable,—

Causing or  
allowing  
child to  
beg.

(a) for the first offence with imprisonment for a term which may extend to two years, or with fine which may extend to five hundred rupees, or with both; and

(b) for the second and subsequent offence with imprisonment which may extend to five years, or with fine which may extend to one thousand rupees, or with both.

(2) If a person having the custody, charge or care of a child is charged with an offence under this section, and it is proved that the child was in any street, premises or place for any such purpose as aforesaid, and that the person charged allowed the child to be in the street, premises or place, he shall be presumed to have allowed him to be in the street, premises or place for that purpose, unless the contrary is proved.

**45.** Whoever gives or causes to be given to any child any intoxicating liquor in a public place or any dangerous drug, except upon the order of a duly qualified medical practitioner or in case of sickness or other urgent cause, shall be punishable—

Penalty for  
giving in-  
toxicating li-  
quor or dan-  
gerous drug  
to a child.

(a) for the first offence with imprisonment for a term which may extend to two years, or with fine which may extend to five hundred rupees, or with both; and

(b) for the second and subsequent offence with imprisonment which may extend to five years, or with fine which may extend to one thousand rupees, or with both.

**46.** If any person is found drunk in any public place, whether a building or not, or on any premises licensed for the sale of liquor, while having the charge of a child apparently under the age of seven years and if such person is incapable by reason of his drunkenness of taking due care of the child, he may be arrested and shall, if the child is under that age, be punishable with fine which may extend to fifty rupees.

Penalty for  
being drunk  
while in-  
charge of a  
child.

**Explanation.**—For the purposes of this section a child shall be deemed to be under the age of seven years if it appears to the competent authority to be under that age unless the contrary is proved.

**Penalty for inciting a child to bet.**

**47.** Whoever, by words, either spoken or written, or by signs, or otherwise, incites or attempts to incite a child to make any bet or wager or to enter into or take any share or interest in any betting or wagering transaction shall be punishable with fine which may extend to five hundred rupees.

**Penalty for taking pawns from a child.**

**48.** Whoever, takes an article in pawn from a child, whether offered by that child on his own behalf or on behalf of any other person, shall be punishable with fine which may extend to five hundred rupees.

**Exploitation of child employee.**

**49.** Whoever ostensibly procures a child for the purpose of any employment and withholds the earnings of the child or uses such earnings for his own purposes shall be punishable with fine which may extend to one thousand rupees.

## CHAPTER VII

### MISCELLANEOUS

**Power of Government to discharge and transfer a child.**

**50.** (1) The Government may, notwithstanding anything contained in the Act, at any time, order a neglected or delinquent child to be discharged from the children's home or special school, either absolutely or on such conditions as it may think fit to impose.

(2) The Government may, notwithstanding anything contained in this Act, order—

- (a) a neglected child to be transferred from one children's home to another;
- (b) a delinquent child to be transferred from one special school to another or from a special school to a borstal school where such a school exists or from a special school to a children's home;
- (c) a child who has been released on licence which has been revoked or forfeited, to be sent to the special school or children's home from which he was released or to any other children's home or special school or borstal school:

Provided that the total period of the stay of the child in a children's home or a special school shall not be increased by such transfer.

(3) The Government may, notwithstanding anything contained in this Act, at any time, discharge a child from the care of any person under whom he was placed under this Act, either absolutely or on such conditions as the Government may think fit to impose.

**Transfers between children's homes etc. under the Act and children homes etc. of like nature in different parts of India.**

**51.** (1) The Government may direct any neglected child or delinquent child to be transferred from any children's home or special school within the territory of Himachal Pradesh to any other children's home, special school or institution of a like nature in any other State with the consent of the Government of that State.

(2) The Government may, by general or special order, provide for the reception in children's home or special school within the territory of Himachal Pradesh of a neglected child or delinquent child detained in a children's

home or special school or institution of a like nature in any other State where the Government of that State makes any order for such transfer, and upon such transfer the provisions of this Act shall apply to such child as if he had been originally ordered to be sent to such children's home or special school under this Act.

Transfer of children of unsound mind or suffering from leprosy.

**52.** (1) Where it appears to the Government that any child kept in a special school or children's home in pursuance of this Act is suffering from leprosy or is of unsound mind, the Government may order his removal to a leper asylum or mental hospital or other place of safe custody for being kept there for the remainder of the term for which he has to be kept in custody under the orders of the competent authority or for such further period as may be certified by a medical officer to be necessary for the proper treatment of the child.

(2) Where it appears to the Government that the child is cured of leprosy or of unsoundness of mind, it may, if the child is still liable to be kept in custody, order the person having charge of the child to send him to the special school or children's home from which he was removed, or, if the child is no longer liable to be kept in custody, order him to be discharged.

**53.** (1) When a child is kept in a children's home or special school, the Government may, if it so thinks fit, release the child from the children's home or special school and grant him a written licence for such period and on such conditions as may be specified in the licence permitting him to live with, or under the supervision of, any responsible person named in the licence willing to receive and take charge of him with a view to educate him and train him for some useful trade or calling.

Placing out on licence.

(2) Any licence so granted under sub-section (1) shall be in force for the period specified in the licence or until revoked or forfeited by the breach of any of the conditions on which it was granted.

(3) The Government may, at any time, by order in writing revoke any such licence and order the child to return to the children's home or special school from which he was released or to any other children's home or special school, and shall do so at the desire of the person with whom or under whose supervision the child has been permitted to live in accordance with a licence granted under sub-section (1).

(4) When a licence has been revoked or forfeited and the child refuses or fails to return to the special school or children's home to which he was directed so to return, the Government may, if necessary cause him to be taken charge of and to be taken back to the special school or children's home.

(5) The time during which a child is absent from a special school or children's home in pursuance of a licence granted under this section shall be deemed to be part of the time for which he is liable to be kept in custody in the special school or children's home.

Provided that when a child has failed to return to the special school or children's home on the licence being revoked or forfeited, the time which

elapses after his failure so to return shall be excluded in computing the time during which he is liable to be kept in custody.

Provision in respect of escaped children.

**54.** Notwithstanding anything to the contrary contained in any other law for the time being in force, any police officer may take charge without warrant of a child who has escaped from a special school or a children's home or from the care of a person under whom he was placed under this Act and shall send the child back to the special school or the children's home or that person, as the case may be; and no proceeding shall be instituted in respect of the child by reason of such escape but the special school, children's home or the person may, after giving the information to the competent authority which passed the order in respect of the child, take such steps against the child, as may be deemed necessary.

Penalty for abetting escape of a child.

**55.** (a) Whoever knowingly assists or induces, directly or indirectly, a child placed out on licence under section 53 to escape from the person with whom he is placed out on licence; or

(b) whoever knowingly harbours, conceals or prevents from returning to special school or children's home or to the person with whom he is placed out on licence or to whose care he is committed under this Act, a child who has so escaped, or knowingly assists in so doing, shall be punishable with imprisonment of either description for a term which may extend to two months, or with fine which may extend to two hundred rupees, or with both.

Contribution by parents.

**56.** (1) The competent authority which makes an order for sending a neglected child or delinquent child to a children's home or a special school or placing the child under the care of a fit person may make an order requiring the parent or other person liable to maintain the child to contribute to his maintenance, if able to do so, in the prescribed manner.

(2) The competent authority before making any order under sub-section (1) shall inquire into the circumstances of the parent or other person liable to maintain the child and shall record evidence, if any, in the presence of the parent or such other person, as the case may be.

(3) The person liable to maintain a child shall, for the purposes of sub-section (1), include in the case of illegitimacy, his putative father:

Provided that where the child is illegitimate and an order for his maintenance has been made under section 125 of the Code of Criminal Procedure, 1973, the competent authority shall not ordinarily make an order for contribution against the putative father, but may order the whole or any part of the sums accruing due under the said order for maintenance to be paid to such person as may be named by the competent authority and such sum shall be paid by him towards the maintenance of the child.

2 of 197

(4) Any order made under this section may be enforced in the same manner as an order under section 125 of the Code of Criminal Procedure, 1973.

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Control of custodian over child.

**57.** Any person in whose custody a child is placed in pursuance of this Act shall, while the order is in force, have the like control over the child as he would have if he were his parent, and shall be responsible for his maintenance, and the child shall continue in his custody for the period stated by the

competent authority, notwithstanding that he is claimed by his parent or any other person:

Provided that no child while in such custody shall be married except with the permission of the competent authority.

**58.** In any area in which this Act is brought into force, the Government may direct that a delinquent child who is undergoing any sentence of imprisonment at the commencement of this Act shall, in lieu of undergoing such sentence, be sent to a special school or be kept in safe custody in such place and manner as the Government thinks fit, for the remainder of the period of the sentence; and the provisions of this Act shall apply to the child as if he had been ordered by a children's court to be sent to such special school or, as the case may be, ordered to be detained under sub-section (2) of section 23.

Delinquent child undergoing sentence at commencement of the Act.

**59.** (1) The Government may appoint as many probation officers for the inspection of special schools, children's homes, observation homes or after-care organisations and such other officers as it may deem necessary for carrying out the purposes of this Act.

Appointment of officers.

(2) It shall be the duty of the probation officer—

- (a) to inquire, in accordance with the directions of a competent authority, into the antecedents and family history of any child accused of an offence, with a view to assist the authority in making the inquiry;
- (b) to visit neglected and delinquent children at such intervals as the probation officer may think fit;
- (c) to report to the competent authority as to the behaviour of any neglected or delinquent child;
- (d) to advise and assist neglected or delinquent children and, if necessary, endeavour to find them suitable employment;
- (e) where a neglected or delinquent child is placed under the care of any person on certain conditions, to see whether such conditions are being complied with; and
- (f) to perform such other duties as may be prescribed.

(3) Any officer empowered in this behalf by the Government may enter any special school, children's home, observation home or after-care organisation and make a complete inspection thereof in all its departments and of all papers, registers and accounts relating thereto and shall submit the report of such inspection to the Government.

**60.** Probation officers and other officers appointed in pursuance of this Act shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code, 1860.

Officers appointed under the Act to be public servants.

**61.** The provisions of chapter XXXIII of the Code of Criminal Procedure, 1973 shall, as far as may be, apply to bonds taken under this Act.

Procedure in respect of bonds.

**62.** The Government may, by general or special order, direct that any power exercisable by it under this Act, shall in such circumstances and under such conditions, if any, as may be specified in the order, be exercisable also by an officer subordinate to the Government.

Delegation of powers.

Protection of  
action taken  
in good faith.

Act No. 8 of  
1897 and of  
certain pro-  
visions of  
Act 2 of  
1974 not to  
apply.

Power to  
make rules.

63. No suit or other legal proceeding shall lie against the Government or any probation officer or other officer appointed under this Act in respect of anything which is in good faith done or intended to be done in pursuance of this Act or of any rules or orders made thereunder.

64. (1) The Reformatory Schools Act, 1897, and section 27 of the Code of Criminal Procedure, 1973 shall cease to apply to any area in which this Act has been brought into force.

(2) The Women's and Children's Institutions (Licensing) Act, 1956 shall not apply to any children's home, special school or observation home established and maintained under this Act.

65. (1) The Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

- (a) the places at which, the days on which, the time at which, and the manner in which, a competent authority may hold its sittings;
- (b) the procedure to be followed by a competent authority in holding inquiries under this Act; and the mode of dealing with children suffering from dangerous diseases or mental complaints;
- (c) the circumstances in which, and the conditions subject to which, an institution may be certified as a special school or a children's home or recognised as an observation home, and the certification or recognition withdrawn;
- (d) the internal management of special schools, children's homes and observation homes and the standards and the nature of services to be maintained by them;
- (e) the functions and responsibilities of special schools, children's homes and observation homes;
- (f) the inspection of special schools, children's homes, observation homes and after-care organisations;
- (g) the establishment, management and functions of after-care organisations; the circumstances in which, and the conditions subject to which, an institution may be recognised as an after-care organisation and such of the matters as are referred to in section 12;
- (h) the qualifications and duties of probation officers;
- (i) the recruitment and training of persons appointed to carry out the purposes of this Act and the terms and conditions of their service;
- (j) the conditions subject to which a girl who is a neglected or a delinquent child may be escorted from one place to another, and the manner in which a child may be sent outside the jurisdiction of a competent authority;
- (k) the manner in which contribution for the maintenance of a child may be ordered to be paid by a parent or guardian;
- (l) the conditions under which a child may be placed out on licence and the form and conditions of such licence;
- (m) the conditions subject to which children may be placed under the care of any parent, guardian or other fit person or fit institution

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2 of 1974

105 of 1956

under this Act and the obligations of such persons or institutions towards the children so placed; and

(n) any other matter which has to be, or may be, prescribed.

(3) Every rule made under this section shall be laid, as soon as may be after it is made, before the Legislative Assembly while it is in session for a total period of not less than fourteen days, which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, the Assembly makes any modification in the rule or decides that the rule should not be made the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

39 of 1949

31 of 1966  
60 of 1960

66. The East Punjab Children Act, 1949, as in force in the territory transferred to Himachal Pradesh under section 5 of the Punjab Re-organisation Act, 1966, and the Children Act, 1960, as in force in the areas comprised in Himachal Pradesh immediately before the 1st November, 1966,

Repeal and savings.

Provided that the repeal shall not effect—

- (a) the previous operation of any law so repealed or anything duly done or suffered thereunder; or
- (b) any right, privilege, obligation or liability acquired, accrued or incurred under any law so repealed; or
- (c) any penalty, forfeiture or punishment incurred in respect of any offence committed against any law so repealed; or
- (d) any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if this Act had not been passed.

## STATEMENT OF OBJECTS AND REASONS

At present, there are two different Acts in Himachal Pradesh which provide for the care, protection, maintenance, welfare, training, education and rehabilitation of the neglected and delinquent children. One of such Acts is, the East Punjab Children Act, 1949, which is in force in the territories added to Himachal Pradesh under section 5 of the Punjab Re-organisation Act, 1966, and the other is the Central Act i. e. the Children Act, 1960, as applied to the areas comprised in Himachal Pradesh immediately before the 1st November, 1966. With a view to bringing about uniformity, it has been considered necessary to enact one unified law on the subject for the whole of Himachal Pradesh.

This Bill seeks to achieve the aforesaid object.

SIMLA:  
The 20th March, 1979.

JAGDEV CHAND,  
Minister-in-charge.

## FINANCIAL MEMORANDUM

The provisions of this Bill are mostly identical with those of the Acts to be repealed. For the effective implementation of the provisions of the Bill, clauses 4, 9, 10 and 11 of the Bill envisage constitution of the child welfare boards and the opening of three types of institutions i.e. children homes, special schools and observation homes. In this regard the State Government shall have to incur Rs. 1,83,000 per annum recurring and Rs. 47,000 non-recurring expenditure.

## MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 65 of the Bill empowers the Government to make rules in respect of the matters enumerated therein. These rules will be laid, as soon as may be after these are made, before the Legislative Assembly. Similarly Clause 62 makes the provisions for the delegation of the powers, other than the rule making power under Clause 65, exercisable by it, to an officer subordinate to the Government. The proposed delegation is essential and, normal in character.

RECOMMENDATIONS OF THE GOVERNOR UNDER ARTICLE 207  
OF THE CONSTITUTION OF INDIA

[Welfare Department File No. 5-10/71-LWP (Wel)-II]

The Governor having been informed of the subject matter of the Himachal Pradesh Children Bill, 1979, recommends, under Article 207 of the Constitution of India, the introduction and consideration of the Bill in the State Legislative Assembly.

नियन्त्रक, मुद्रण तथा लेखन सामग्री, हिमाचल प्रदेश, शिमला-3 द्वारा मुद्रित तथा प्रकाशित।